UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/52/495
16 October 1997
ENGLISH
ORIGINAL: ENGLISH/SPANISH

Fifty-second session
Agenda item 111

RIGHT OF PEOPLES TO SELF-DETERMINATION

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 51/83 of 12 December 1996, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

97-27988 (E) 311097 031197

/...

Annex

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

I. INTRODUCTION

1. During its fifty-first session the General Assembly adopted resolution 51/83 on 12 December 1996 which, inter alia, urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government or threaten the territorial integrity and political unity of sovereign States or to promote secession or fight the national liberation movements struggling against colonial or other forms of alien domination or occupation. The Assembly called upon all States that had not yet done so to consider taking necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and urged them to cooperate with the Special Rapporteur in the fulfilment of his mandate.

2. The General Assembly reaffirmed that the use of mercenaries and their recruitment, financing and training are causes of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations; requested the Centre for Human Rights of the Secretariat, as a matter of priority, to publicize the adverse effects of mercenary activities on the right to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries; and requested the Special Rapporteur to report, with specific recommendations, his findings on the use of mercenaries to undermine the right of peoples to self-determination to the General Assembly at its fifty-second session.

3. Accordingly, and pursuant to the above-mentioned resolution, the Special Rapporteur has the honour to submit this report on activities during the period January-August 1997 to the General Assembly for consideration.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

4. The Special Rapporteur submitted his report (E/CN.4/1997/24) to the Commission on Human Rights on 13 March 1997. While in Geneva, the Special Rapporteur had consultations with representatives of various States and held meetings with members of non-governmental organizations. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner/Centre for Human Rights.

5. The Special Rapporteur returned to Geneva on two occasions, from 20 to 23 May 1997 and from 11 to 15 August 1997, to hold various meetings, to participate in the fourth meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, held from 21 to 23 May 1997, and to draft this report.

B. Correspondence

6. Pursuant to General Assembly resolution 51/83, the Special Rapporteur sent a communication on 4 June 1997 to all States Members of the Organization requesting the following:

(a) Information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Information available to their Government on participation by nationals of their country as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in human rights violations;

(c) Information on the possible existence of mercenary activities in the territory of another country from which actions were carried out that affected or potentially affected the sovereignty of their country, the exercise of the right of their people to self-determination, and the enjoyment of human rights by their population;

(d) Information on the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband;

(e) Information on domestic legislation currently in force and on international treaties to which their country is a party, outlawing mercenary activities and the use of mercenaries, together with observations on their Government's position regarding the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989;

(f) Suggestions which, in their Government's view, may be of use in enhancing the international treatment of the topic of the prohibition of the use of mercenaries;

(g) Information and views on the existence of security service, consultancy and military training companies offering their services to Governments in order to intervene in internal armed conflicts with the assistance of mercenarized military professionals, for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the country's investments and economic ventures.

7. In response to an earlier request by the Special Rapporteur, the Director-General for Special Affairs of the Ministry of Foreign Affairs of Colombia, Mr. Juan Manuel Osorio Acevedo, sent the following letter, dated 19 December 1996, to the Special Rapporteur. The text of the letter reads as follows:

> "I have the honour to address you on behalf of the Government of Colombia in response to your note G/SO 214 (18-13), in which you request information on possible activities by mercenaries and their use as a means of violating human rights.
>
> "The Ministry of Defence of Colombia, through Dr. María Victoria Uribe de De Guzmán, Human Rights Adviser, has informed the Ministry of Foreign Affairs, in note 001626/MDASE-DH-725, that it has no knowledge of any such activities in Colombia."

8. In a letter dated 6 January 1997 addressed to the Assistant Secretary-General for Human Rights, the Minister for Foreign Affairs of Cuba, Mr. Roberto Robaina González, stated the following:

> "I have the honour to acknowledge receipt of your note G/SO 214 (18-13), together with the appended letter from the Special Rapporteur on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, with reference to General Assembly resolution 50/138, which requests the Special Rapporteur to report on the use of mercenaries.
>
> "The information below also meets the requirements of General Assembly resolution 51/83 dealing with the same matter. In addition, the Government of Cuba reserves the right to provide any further information it may deem timely and relevant.
>
> "The use, recruitment, financing and training of mercenaries are crimes that are of deep concern to the Government of Cuba, inasmuch as they violate fundamental principles of international law, including non-intervention in the internal affairs of States and the territorial integrity, legal equality and independence of States, and impede the process of the self-determination of peoples struggling against colonialism and all forms of foreign domination and occupation. The activities of mercenaries constitute, in and of themselves, a flagrant violation of basic, inalienable human rights.
>
> "The Government of the Republic of Cuba supports the outlawing of the use, recruitment, financing and training of mercenaries and the suppression of their activities, considering as it does that they constitute a flagrant violation of the sovereign right of States and the exercise of the right of peoples to self-determination as well as an affront to the human rights and fundamental freedoms of all humanity. Accordingly, Cuba has been a sponsor, both in the General Assembly and in the Commission on Human Rights, of all the resolutions adopted to date in this matter, and has consistently supported the admirable work that has been accomplished by

Mr. Enrique Bernales Ballesteros ever since his assumption of the duties of that Commission's Special Rapporteur.

"It is a fact, as the Special Rapporteur states in his report to the Commission on Human Rights at its fifty-second session, that even in peacetime mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, and endangering the lives, safety and human rights of its inhabitants.

"Our country has been the victim of mercenary attacks from the earliest days following the victory of the revolution. Most of these actions have been organized in the United States of America and have involved primarily the use of Cuban nationals residing in that country, although on some occasions the presence of United States nationals, hiring themselves out as soldiers of fortune, has been reported. For this reason, the Cuban Government considers that nationals of a country should be deemed mercenaries when they attack their own country at the behest of a foreign Power and are in its pay. The Special Rapporteur should examine this situation in greater depth, as his findings might well enrich his terms of reference and shed fresh light on them.

"The mercenary and terrorist groups operating against Cuba from the territory of the United States do so openly and with full publicity. They are organized along military lines, their members are trained in the use of arms and explosives, and they boast shamelessly of their plans for aggression and criminal actions against Cuba. Examples of such terrorist groups are those known as 'Comandos L', 'Alpha 66', 'Brigada 2506', 'Partido Unidad Nacional Democrática (PUND)' and the self-styled 'Comandos F-4', all of which prepare and organize punitive actions and terrorist operations against Cuba from bases in southern Florida, United States. This constitutes a flagrant violation of the fundamental human rights of the Cuban people, notably its right to self-determination.

"Frequently, in fact almost daily, the Florida media report on the activities of the terrorist group known as Alpha 66, whose military training base, known as Rumbo Sur, is located at 40th St. SW and 172nd Avenue, Miami. That base is where preparations are made for the main terrorist operations against Cuba, and it is also known that United States naval personnel serve as instructors there.

"In October 1994, a terrorist commando group consisting of six men, all from the United States and all members of the terrorist organization PUND, infiltrated Cuba at a point on the coast north of Caibarién, Villa Clara Province. In the course of the incursion the commandos murdered a Cuban citizen while taking his car by force. The object of the terrorist group was to establish itself in the Escambray Mountains to carry out actions aimed at destabilizing the country's internal order.

"In November of that same year, three individuals, also members of PUND and also from the United States, were captured after infiltrating the Hicacos region in Matanzas Province with the intention of sabotaging and opening fire on economically significant facilities. These cannot be

regarded as isolated incidents. They are an integral part of a deliberate policy of aggression against Cuba.

"The Government of Cuba again expresses its confidence that the Special Rapporteur will use his good offices to ask the United States authorities to take energetic and decisive action to put an end to this state of affairs out of regard for the sovereignty and independence of the Republic of Cuba."

9. In a letter dated 7 October 1996, received by the Special Rapporteur on 6 February 1997 and addressed to the Assistant Secretary-General for Human Rights, the Minister of State for Internal Affairs of Uganda, Mr. Francis B. Nshemeire, stated the following:

"Reference is made to your letter G/SO 214 (18-13) of June 1996 addressed to the Minister for Foreign Affairs of Uganda in regard to the above-mentioned caption.

"Information available here does not reveal the existence of mercenaries in Uganda, let alone their being used 'as a means to violate human rights and impair the exercise of rights of peoples' self-determination'."

10. In note verbale No. 207/AL dated 24 June 1997, the Permanent Mission of France to the United Nations Office at Geneva stated that it would reply to the Special Rapporteur's request for information within two months, as that length of time was deemed necessary for the relevant data to be collected and forwarded to the Special Rapporteur.

11. The Permanent Mission of the Russian Federation to the United Nations Office at Geneva conveyed its Government's reply to the Special Rapporteur's request for information in note verbale No. 585 dated 14 July 1997, containing the following:

"The new Criminal Code of the Russian Federation, which came into force on 1 January 1997, views the use of and service as mercenaries as criminal.

"Article 359 ('Mercenary activity') of the aforementioned Code reads:

'(1) The recruitment, training, financing or other material support of mercenaries and the use of mercenaries in armed conflicts or hostilities:

'Shall be punishable by deprivation of liberty for a period of from four to eight years;

'(2) Participation by mercenaries in armed conflicts or hostilities:

'Shall be punishable by deprivation of liberty for a period of up to five years.

Note

''"Mercenary" shall mean a person acting for the purpose of obtaining material reward and otherwise than under a commission to perform official duties who is either not a citizen of a country participating in a conflict or hostilities or not permanently resident in its territory."'

12. The chargé d'affaires ad interim of the Permanent Mission of Cyprus to the United Nations Office at Geneva, Ms. Loria Markides, has conveyed to the Special Rapporteur a letter dated 25 July 1997 in which she states the following:

"I have the honour to refer to your letter of 4 June 1997 concerning General Assembly resolution 51/83 and to inform you as follows:

"Cyprus ratified the above Convention on Mercenaries on 21 May 1993. According to the ratification law (14(III) 1993) any person who commits any offence which is set forth in the Convention is guilty of a felony and shall be liable to imprisonment for seven years.

"No legal proceedings have been taken against any person until today, since no formal complaint has been made or information given to the appropriate authorities for the committing of an offence under the above-mentioned law."

13. The chargé d'affaires ad interim of the Permanent Mission of Brunei Darussalam to the United Nations Office at Geneva, Mr. Haji Mohd Nor Haji Jeludin, has provided the Special Rapporteur with the following information, also dated 25 July 1997:

"The Attorney-General's Office of the Ministry of Laws of Brunei Darussalam has confirmed that there are no laws outlawing mercenary activities and the use of mercenaries. Brunei Darussalam is not a member of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989. And, finally, there are no mercenary activities in Brunei Darussalam pertaining to the information requested."

14. By a note verbale dated 30 July 1997 the Permanent Mission of Ecuador to the United Nations Office at Geneva replied to the various questions contained in the Special Rapporteur's letter of 4 June 1997 (see para. 6) as follows:

"(a) Ecuador has not recorded any kind of mercenary activities. Activities of this kind are expressly prohibited by current legislation.

"(b) No Ecuadorian nationals are known to have participated in mercenary activities or in the commission of acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination or against the effective exercise of the human rights of their people.

"(c) Colombian guerrillas are quite active very close to the frontier with Ecuador. It is important to point out in this connection that specific military agreements have been concluded between the armed forces of Colombia and Ecuador on common procedures and combined military actions designed to give effect to frontier-control arrangements in the interests of their common security.

"(d) There is no knowledge of any participation by mercenaries in the commission of internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband.

"Ecuador is committed to combating smuggling.

"Ecuador has been free of terrorist activities, and no death squads have been detected in its territory.

"(e) Ecuador has submitted to the National Congress for approval the text of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, for it recognizes that the activities of mercenaries are contrary to the fundamental principles of international law contained in its Constitution.

"Ecuador also acknowledges the hard work done by the Special Rapporteur on this topic and reaffirms its support for that work.

"(f) The United Nations should permanently monitor such activities, with a view to: establishing flexible arrangements for exchange of information and mutual assistance between the competent authorities of Member States confronted by this type of problem; disseminating information through specialized media in order to make available the experience of Member States confronted by these problems and to make known common or individual procedures to combat and eliminate the use of mercenaries; and sponsoring conferences of the intelligence agencies of Member States.

"(g) None available."

15. The Permanent Mission of Germany to the United Nations Office at Geneva replied to the Special Rapporteur's request for information by a note verbale of 31 July 1997. The information conveyed in this note verbale is set out below:

"In Germany the prosecution authorities and courts have a statutory duty to prosecute and punish any acts committed by mercenaries that are defined as offences under German law. The same applies to any person who recruits, uses, finances and trains mercenaries. Specifically, the relevant provisions in the Penal Code relate to murder, manslaughter, causing an explosion, rape, robbery and causing bodily harm as well as any attempt to commit or instigate such offences or complicity in their commitment. Offences committed abroad also fall within the scope of German penal law as defined by the relevant statutory provisions.

"Germany is a signatory to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Ratification is currently being considered.

"The Government of the Federal Republic of Germany takes a grave view of the recent increase in reports of mercenary activity. It believes only concerted efforts by the international community can effectively combat the dangers to world peace, international security and the right of peoples to self-determination stemming from the use of mercenaries."

16. By note verbale No. GENC 011-115 of 6 August 1997 the Permanent Mission of Finland to the United Nations Office at Geneva replied to the Special Rapporteur's letter of 4 June 1997 as follows:

"With reference to point (e) of the letter by the Special Rapporteur the Government of Finland wishes to submit the following information. The Government of Finland is currently considering whether it is possible and desirable in the light of the present Finnish legislation to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989."

17. During the period covered by this report the Special Rapporteur also received general communications from various non-governmental organizations, including the Bougainville Freedom Movement; the Centre for Conflict Resolution of Cape Town University; International Alert, London; the Humanitarian Law Centre, Belgrade; the Lawyers Committee for Human Rights, New York; and the Mohajir Quami Movement, Pakistan.

III. MERCENARY ACTIVITIES IN COUNTRIES OF AFRICA

A. General aspects

18. Since the 1970s various African countries have suffered from the presence of mercenaries who have interfered in internal affairs and had a considerable impact on the self-determination of the peoples of the States where they were active. On the eve of the third millennium mercenary activities in Africa have declined but not disappeared. They intermittently reemerge in connection with armed conflicts and power struggles and are thus more of a latent danger. In addition, there is the rechannelling of mercenary activities through private security firms, which present a more modern façade and engage in activities which are apparently legal but are no less dangerous for the independence, economies, democracy and self-determination of the African peoples.

19. On the basis of the information collected over 10 years the Special Rapporteur responsible for analysing and proposing options for the elimination of mercenary activities is justified in stating that, although the phenomenon of mercenarism can occur in any country and continent, Africa is the place most exposed to the activities of mercenaries. In the 1970s this was due to the vestiges of colonialism and the open hostility of those who felt their interests harmed by the accession to independence of sovereign African States.

20. However, the continuing examples of countries in which attacks were carried out by mercenary forces in the 1980s and the 1990s provide the basis for a description of the phenomenon. This should be taken into account in the work of strengthening peace in Africa and securing the adoption of preventive measures against mercenaries.

21. The recurrent elements observable in the countries which have suffered from the presence of mercenaries are noted below, in a list which is neither exhaustive nor definitive:

(a) Political instability, virtually endemic in countries in which the struggle for power among factions reveals a marked reluctance to respect the rules of democracy on the part of political leaders who, in order to maintain their share of power, do not hesitate to engage in militarism and create armed groups around themselves;

(b) The weak institutional structure of the armed forces, which as a result assume in practice the role of deliberative bodies, with the capacity to arbitrate internal political disputes and resolve them by military means;

(c) The development of a segregationist policy in the days of apartheid, which affected many countries of southern Africa and subjected them to criminal acts and attacks by battalions of mercenaries from the very heart of the racist segregationist regime;

(d) The existence of many internal armed conflicts, which at times embraced whole regions and in which the belligerents hired mercenaries to boost their military potential;

(e) The lucrative business for organizations which hire and supply mercenaries and for arms dealers resulting from the incitement of hatred and political, religious, ethnic or any other kind of rivalry which fuels the prolongation of the armed conflicts;

(f) The insecurity of rulers, who have not hesitated to organize militias or military apparatuses for their personal protection, in which the training and visible presence of foreign mercenaries have exacerbated rivalries and fuelled armed confrontations, especially since these paramilitary corps of bodyguards are recruited from members of the ethnic group to which the ruler belongs. The response of other political leaders is then to recruit their own armed militias. This atmosphere of mistrust and militarization is favourable to the presence of mercenaries;

(g) The poverty, insecurity and lack of prospects which foster in some young people a marked tendency towards violent behaviour. This leads to the emergence of armed gangs which impose exactions on the population. Of course, this development would seem to be connected more with an increasing problem of vandalism and common crime. But it should not be forgotten that a significant number of young people, driven by hunger and unemployment and skilled in the handling of weapons, find that the mercenary life offers lucrative employment and a lifestyle very similar to that of the bogus heroes of a number of television series;

(h) Lastly, there are the modern private security companies which provide many different kinds of service, economic advice and sophisticated military training but which are covers for former professional soldiers and mercenaries offering themselves as a solution, in exchange for large sums of money, to countries experiencing instability and armed conflicts and the consequent impossibility of developing their enormous natural resources. Such companies, as will be discussed below, today represent the biggest and most sophisticated threat to the peace, sovereignty and self-determination of the peoples of many countries.

22. The description which we have given is based on the direct observation of cases, the statistically computable recurrence of situations in which the mercenary component manifests itself, and the changes which mercenary activities are undergoing. The gradual disappearance of the traditional mercenary, that is the misfit professional soldier who acted on his own initiative to form a gang to do dirty work on behalf of a third party, has not meant the elimination of mercenarism. Rather, mercenarism has become more sophisticated and is being channelled back through the façade of modern management and service companies, but it lives on.

23. This report does not claim to have listed and classified countries according to whether they are affected by the presence of mercenaries. There are many African countries which are achieving an optimum economic and political viability. But this progress is notably neither general nor stable. On the contrary, the precariousness of institutions, political instability and the military factor remain problems for a number of countries of Africa. It is against this background that the Special Rapporteur receives reports and information about mercenaries, who inevitably surface in places where a political crisis has become an armed struggle. Their presence, obviously, only adds fuel to the confrontation. This is a fact which the international community cannot disregard. Mercenaries continue to have an impact on life and peace in several African countries.

B. The case of Sierra Leone

24. The situation of profound political instability and compulsive actions by armed groups which prevails in Sierra Leone can be taken as a real-life example of the factors characterizing African countries in which the presence of mercenaries has further exacerbated their problems.

25. It will be recalled that, after four years of armed clashes and precarious control of power by a military regime, Ahmed Tejan Kabbah became President of Sierra Leone in democratic elections held in March 1996. The rebel forces of the Revolutionary United Front (RUF) then accepted a ceasefire, and months later, at the end of November 1996, a peace agreement was signed by President Ahmed Tejan Kabbah and the leader of the rebels, Foday Sankoh. The Governments of Côte d'Ivoire, Guinea, Burkina Faso, Nigeria, Ghana and Togo contributed to the peace effort, thereby providing for the world an eloquent demonstration of unity and efficiency in West Africa. From that moment on it was the responsibility of the democratic Government to strengthen political stability, the supremacy of civil authority and peace.

26. Fears about the extreme fragility of the peace have been borne out by events to a considerable extent. The problems of extreme poverty and lack of staple foods and the continuing presence of armed groups engaged in pillage have helped to perpetuate insecurity and fear as factors limiting the Government's ability to expand its basis of legitimacy. For much of the population, there has been no difference whatever between the war of earlier months and the proclaimed peace; people have been subjected not only to the continuing exactions of the armed rebels but also to those imposed by members of the regular armed forces.

27. It was probably the widespread insecurity which caused the elected Government to decide not to cancel the contract of Executive Outcomes, a private security company that works with mercenaries and performs a variety of services. Instead, it reformulated the contract making the mercenaries principally responsible for the protection of the region of Kovo against the attacks of the rebel forces. However, the signing of the peace agreement carried with it the rebels' request that Executive Outcomes should leave Sierra Leone. We assume that this had its effect on a Government which, whatever its intentions, relied on the supposed efficiency, protection and security to be afforded by a private company formed by mercenaries, who were more interested in what they could earn for their services than in a stable and lasting peace in Sierra Leone.

28. Be that as it may, a coup d'état occurred on 25 May 1997, which was led by Commander Johnny Paul Kosoma and in which the lower ranks of the armed forces took part. The toppling of President Ahmed Tejan Kabbah and the assumption of power by a revolutionary council, which immediately called upon Nigeria to return Foday Sankoh, put an end to a precarious peace and triggered the renewed violence which still afflicts the country. The Governments of the region not only have condemned the coup but have also isolated the rebels and demanded the return of the democratic Government of President Ahmed Tejan Kabbah.

29. The thesis which the Special Rapporteur advances is that the presence of the private company which was partly responsible for the security of Sierra Leone created an illusion of governability but left intact some substantive problems which could never be solved by a service company. This danger was flagged in paragraphs 64 and 65 of the report of the Special Rapporteur to the Commission on Human Rights (E/CN.4/1996/27), where he noted that Executive Outcomes was involved in such delicate activities as: "training of officers and other ranks; reconnaissance and aerial photography; strategic planning; training in the use of new military equipment; advising on arms purchases; devising psychological campaigns aimed at creating panic among the civilian population and discrediting the leaders of the RUF, etc." (para. 65). Moreover, Executive Outcomes was responsible for overall security and was directly active in the Kovo and Koidu districts, Kangari Hills, and Camp Charlie at Mile 91.

30. The issue was also dealt with in the report which the Special Rapporteur prepared for the General Assembly (A/51/392, para. 33) in 1996, where he warned about the precarious situation in Sierra Leone, pointing out that the presence of a company in Sierra Leone which worked with such dubious personnel as mercenaries in security matters was a debilitating factor which at some point would impair the stability of the legal Government. Prompted by an enlightened sense of unity, discipline and subordination to civilian rule, Sierra Leone

should accord priority to organizing its police and armed forces, which should assume sole responsibility for security. Retaining the company for that function until late 1996 was a mistake and a loss of valuable time, and, according to the thesis developed here, it weakened the legal Government of President Ahmed Tejan Kabbah.

31. A committee appointed by the Economic Community of West African States (ECOWAS) has now started to discuss with the junta governing Sierra Leone procedures for a rapid restoration of the constitutional order, with the proviso that the return of power to President Ahmed Tejan Kabbah is non-negotiable. However, at the end of July 1997 the military junta announced that it would remain in power until the year 2001 and with that announcement compounded its international isolation and the possibility of being subjected to sanctions or of causing further resort to arms in the region.

32. The current situation in Sierra Leone has quite simply added to the suffering of its population: no fewer than 500,000 persons are estimated to have been displaced, most of whom are living a hand-to-mouth existence. The demand made by the Governments of West Africa, which has the endorsement of the Organization of African Unity (OAU) and the United Nations, could provide the basis for the return to power of the legitimate President, Ahmed Tejan Rabbah, and is a prerequisite for launching sustained programme activities promoting life, humanitarian care, order, security, peace and democracy. With a view to the kind of intense effort required by the situation in Sierra Leone, the active commitment of the African countries and United Nations backing of that commitment are indispensable if there are to be political stability and opportunities for development in Sierra Leone. But events should also teach us to be wary of wrong approaches that do nothing to cure the structural ills suffered by the people. In the final analysis, the right to life, the political and legal institutions of States, security, peace and maintenance of the rule of law and democracy are not matters to be turned over to private companies which claim to perform security services; such companies stand to gain by selling their competence as security agents but they certainly cannot replace bodies which have been entrusted with the responsibility of protecting life and maintaining security as an obligation vested in the State.

C. Presence of mercenaries during the armed conflict in the Democratic Republic of the Congo

33. In the report which the Special Rapporteur submitted to the Commission on Human Rights in March 1997 he made an incidental reference to the presence of mercenaries which presumably had been hired by the Government of what was then Zaire, when Mobutu Sese Seko was still President. The communications sent by the Special Rapporteur to the Government of Zaire to shed light on the allegations were never answered. It appears that the hired mercenaries were active mainly when the military conflict was concentrated in the east and that their principal goal was to prevent the city of Kisangani from falling into the hands of the Alliance of Democratic Forces for the Liberation of Congo-Zaire, which was headed by Laurent Désiré Kabila.

34. Notwithstanding the support of the mercenary forces, the Alliance advanced gradually in Zairian territory until it took Kinshasa, the capital, and installed the Government of the current President of the Republic.

35. The overthrow of the Government of Mobutu Sese Seko, after 31 years in power, cannot alter the fact that it drew on approximately US$ 50 million in public funds to pay and arm mercenaries in a desperate attempt to remain in power or the fact that it was the Government itself which by this action endangered the lives of Zairians and the right of the people to self-determination. According to the information received, the mercenaries hired to defend Mobutu came principally from: the Federal Republic of Yugoslavia (Serbia and Montenegro); Bosnia and Herzegovina; and France, where two former members of the presidential security teams, Alain le Carro and Robert Montoya, were alleged to be in charge of recruiting between 200 and 300 mercenaries. Laurent Kabila himself said in a public statement that mercenaries had been hired to defend then President Mobutu, the majority of whom were Angolans, Frenchmen and South Africans. There were also, but in smaller numbers, Belgians, English and Mozambicans. Executive Outcomes was also mentioned as a provider of mercenaries, a fact that the company immediately denied. These reports were repudiated by the Governments of several countries referred to in connection with their nationals; they stated that they had no involvement whatever in the alleged hiring of mercenaries.

36. There is some evidence of the actual presence of the mercenaries who attempted to defend Mobutu Sese Seko's Government and who after the fall of Kisangani for the most part chose to withdraw. With the intention of clearly establishing what actually happened, the Special Rapporteur has turned to the Government of the President of the Democratic Republic of the Congo to request from it accurate and verifiable information.

IV. PERSISTENCE AND EVOLUTION OF MERCENARY ACTIVITIES

A. Critical analysis of the current situation

37. The information accumulated over the years and the experience gained through working visits to countries where mercenary activities are occurring in the context of internal or international armed conflicts have enabled the Special Rapporteur to assemble a critical mass of material that constitutes a sufficient basis for comprehensive reflection aimed at providing useful inputs for the decisions on the subject to be adopted by States and international organizations. Some of his ideas have already been submitted to the Commission on Human Rights and have been revised and updated with a view to their submission to the General Assembly.

38. The allegations made regarding the presence of mercenaries in armed conflicts led the Special Rapporteur to study in depth the cases and forms taken by mercenary activity. The seriousness of some of the allegations compelled him to undertake several on-site missions. Information was gathered from authorities and non-governmental organizations, from investigations conducted by specialized agencies and the press, from interviews with victims of mercenary violence and their families, and from such interviews as could be conducted with

mercenaries, some of whom accepted that designation while others did not, and by reviewing judicial documentation and ascertaining the open and public existence of organizations devoted to the recruitment of soldiers of fortune. The evidence was that armed conflicts arising in regions as disparate as southern Africa, Central America and the former Yugoslavia nevertheless had one common feature, namely the participation of mercenaries, who were almost always associated with the most vicious aspects of the conflicts.

39. On the basis of his studies and research, the Special Rapporteur has maintained and continues to maintain that mercenary activities are not a thing of the past, but still exist; mercenaries are used as a means of violating human rights and jeopardizing the self-determination of peoples and the stability of legitimate Governments. Armed conflicts, terrorism, arms trafficking, covert operations relating to the interest of a third Power acting to harm one or more parties to an armed conflict, the inability of a Government to ensure security in its country, and violence linked to extremist intolerance foster or create the market for mercenaries, defined as foreign experts or enterprises whose "skilled" services are sought because of their proven experience in military matters.

40. Despite the condemnations contained in the resolutions of several United Nations bodies, Governments which are weak or whose power is illegitimate, armed insurgent groups and Powers acting through covert operations have been responsible for the existence of mercenary activities, with a heavy toll on the peoples whose lives they affect.

41. Mercenaries are hired for various reasons: military professionalism; experience in warfare; concealment of the real mastermind; greater safety in acting without directly assuming the consequences; the comparatively low cost, in terms both of money and of endangering the lives of one's own military personnel; knowledge of strategic planning, and so on. The reality is that there are persons disposed to become mercenaries and that, ultimately, they are so disposed because of the pay they receive for conducting unlawful activities in a country other than their own; their intervention is directly motivated by financial gain. This situation is compounded by the existence of modern entrepreneurial conglomerates involved in security as an "industry", which hire mercenaries for some of their activities. There are usually two circumstances that determine the actual use of mercenaries: on the one hand, the existence of an organization, State or party to a conflict which, in order to carry out operations that are not in conformity with the law or with international obligations of non-interference, resorts to hiring mercenaries as a way of achieving its goals. On the other hand, there are recruiting organizations and enterprises and people who, for high pay, will agree to serve as mercenaries in the knowledge that they will be performing acts prohibited by national laws and international treaties protecting human rights, State sovereignty and the right of peoples to self-determination.

42. The investigation of mercenary activities must be objective, encompass all those involved and seek to determine the nature of the act, without accepting any formal legal limitations that may be invoked precisely to conceal the mercenary component. When there are accusations that acts have been committed by mercenaries the actual identity and nationality of the person have to be

determined; the investigators must go through the files, rule out altruistic voluntary enlistment, compile information on recruitment and training centres for soldiers of fortune, follow the trail of covert operations, obtain reliable data on the pay and other benefits agreed upon, and detect the simultaneous use of other nationalities and passports. When a new nationality is granted to foreigners taking part in an armed conflict, it is necessary to establish the length of time, circumstances and legal grounds for the good faith and legitimacy of the new nationality. The investigation should also cover private security companies when there are reasonable indications that their services entail the employment of mercenaries who may resort to methods prohibited under international law. The issue of mercenary activities has so many ramifications nowadays that attention must focus on the matter of nationality, which hitherto has been considered as a means of differentiation and a determining factor in deciding whether an act that impedes the enjoyment of human rights and the self-determination of a people is a mercenary act. Indeed, a foreign Power can avail itself of nationals of another country to do serious harm to that country. In such a case, the rules of international law as they now stand would not allow the act to be defined as mercenary, even if there was evidence of recruitment and payment. Nevertheless, if existing international law is excessively rigid, inadequate or full of gaps or lends itself to an interpretation too difficult to apply for the purpose of defining mercenary acts, it would be wrong to invoke the existing rules as justifying acts and behaviour which are intrinsically mercenary.

43. Without obviating the need to clarify, refine and expand the rules of customary international law and conventional international law to combat mercenary activity, it should be established as a principle that, in essence, the aim of such rules is to condemn a mercenary act in the broad sense as the buying and selling of criminal services in order to interfere with the enjoyment of human rights, sovereignty or the self-determination of peoples; and that there is international jurisprudence condemning interference by one State, not to speak of individual organizations, in the internal affairs of another State and in the lives of its people. It is an aggravating factor if nationals of the latter country are employed for that purpose. Such nationals would not strictly speaking be considered mercenaries, but, on the part of those recruiting them, the aim of using them as mercenaries is an undeniable fact, as is the willingness of such nationals to accept a relationship that turns them into mercenaries.

44. The Special Rapporteur believes that unlawful activities in which nationality is used to mask their mercenary nature by a Power that recruits, prepares and pays an individual to commit a criminal act against another country should be analysed and debated with a view to revising current international provisions on the subject. Since the General Assembly has repeatedly condemned mercenary activities, as have such other United Nations organs as the Economic and Social Council and the Commission on Human Rights, and since in addition Member States have condemned such activities and some countries have national laws making mercenarism a crime, where there are no laws or only inadequate laws a case can be made for the existence of customary international law that rejects, condemns and prohibits mercenary activities based on the nature of the acts and not on the fact of having a different nationality.

B. Current international legislation and its limitations

45. A fundamental question raised by the persistence of mercenary activities is whether current international legislation adequately covers and resolves the problems posed by the presence of mercenaries. In the Special Rapporteur's experience, the topic calls for a review as outlined below. Issues on which the relevant United Nations bodies must take a stand include: what is the status of a foreigner who enters a country and acquires its nationality to conceal the fact that he is a mercenary in the service of a third State or the other side in an armed conflict? What is the status of a non-resident national who is paid by a third State to carry out criminal activities against his own country of origin? And what about a dual national, one of whose nationalities is that of the State against which he is acting, while he is being paid by the State of his other nationality or by a third State? What are the limits of jus sanguinis in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears? These questions are not simply casuistic. The Special Rapporteur's earlier reports contain specific references to situations such as those just described and, even though the evidence pointed to mercenary activities, legal inadequacies and gaps made it difficult accurately to classify the act and the person who committed it.

46. In this context, it is regrettable that the General Assembly's repeated recommendations that a meeting of experts should be convened to consider further the issue of mercenaries and to make proposals on a clearer legal definition in order to assist in the prevention and punishment of mercenary activities have not been taken up as yet, owing to lack of financial resources. The continued failure to adopt criteria to promote a common and strong position against mercenary activities is tantamount to encouraging the existence of mercenaries and their activities, despite isolated action taken by individual countries. Contradictions are thus likely to arise between declarative statements formally condemning mercenary activities and practical concessions to the provision of efficient services by persons or groups of persons and businesses with a mercenary past and strong suspicion about and mistrust of the activities they are carrying out at present.

47. The Special Rapporteur, on the basis of his study of conflicts and situations with a mercenary component, is compelled to reiterate his viewpoint to the General Assembly and to maintain that, no matter how they are used or what form they take to acquire some semblance of legitimacy, are a threat to the self-determination of peoples and an obstacle to the enjoyment of human rights by peoples who have to endure their presence.

48. An analysis of the factors behind the recurrence of the phenomenon must consider the problems caused by gaps in existing legislation and by flexibility with regard to classification as a mercenary. The persistence of mercenary activities, the range and variety of the forms in which they are carried out and the hidden networks of complicity behind these activities suggest that States, particularly the smallest and weakest ones, are not adequately protected against mercenarism and its various forms. The international legal instruments that serve as a framework for the consideration of the question are imperfect and contain gaps, inaccuracies, technical defects and obsolete terms that allow

overly broad interpretations to be made in order to prevent persons who are in fact nothing but mercenaries from being classified as such.

49. Article 47 of Protocol I Additional to the Geneva Conventions of 1949 is the only universal international provision in force that contains a definition of mercenaries; paragraph 1 punishes the mercenary by excluding him from the category of combatant or prisoner of war, which amounts to condemning him for his participation in armed conflicts; and paragraph 2 then states the definition. The first point to emphasize is that, because of its placement and contents, article 47 of the Protocol does not legislate on mercenary activities, but, rather, limits itself, from the standpoint of international humanitarian law, to providing for the possibility of mercenarism and defining the legal status of the mercenary if he takes part in an armed conflict. As may be seen, it does not legally define the act; hence the above-mentioned gaps.

50. Furthermore, the definition of a mercenary contained in article 47 lists the cumulative and concurrent requirements that must be met in order to determine who is a mercenary and who is not. Given the variety and complexity of the armed conflicts of the past three decades, however, the wording of this provision has not always been suitable for classifying mercenary activities. The point made by the Special Rapporteur in one of his first reports (E/CN.4/1988/14, para. 43) has turned out to be true:

> 'One important element for the understanding and application of article 47 of Additional Protocol I is that no single requirement set forth in subparagraphs (a) to (f) is sufficient in itself for a person to be classified as a mercenary. The requirements are cumulative and concurrent, and all must be met for a person to be described as a mercenary. This is also one of the aspects that has raised the most objections to the application of article 47, since many have pointed out that these requirements are in fact very difficult to prove and that they make it easy for the mercenary to avoid being classified as such, while the party that has been attacked loses its legitimate right to have him punished and obtain redress'.

51. This gap is also not filled in the internal legislation of most countries. According to the information provided directly to the Special Rapporteur by Governments, the laws of most countries do not classify mercenarism as a punishable offence. Although it has been eight years since the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly, it still has not entered into force, as barely 11 countries have ratified or acceded to it. While its provisions contain measures which are a step forward towards the eradication of this reprehensible activity, it should be noted that article 1, paragraph 1, reproduces almost verbatim the text of article 47 of Additional Protocol I on the definition of a mercenary. Added paragraph 2 relates to mercenary violence against the constitutional order or territorial integrity of a State. No progress has therefore been made with regard to a better and simpler definition of the concept of mercenary, which would allow quicker and more direct action to be taken against mercenary activities.

52. In this context of the gaps in and limitations of universal international legislation, Africa enjoys better legal protection thanks to the Convention for the Elimination of Mercenarism in Africa, which was adopted by the OAU at its 1977 meeting in Libreville and entered into force in 1985. But "better legal protection" does not mean full protection against all the current shapes, forms and manifestations which mercenary activity may adopt or present. Even though the Convention is more complete than article 47 of Additional Protocol I, it does not differ much from that text as far as the definition of a mercenary is concerned, and it lends itself to different and perhaps contradictory interpretations when it is States themselves that, on the initiative of their Governments, hire private firms to perform services connected with public order and security.

53. The situation is one that involves a vacuum in treaty law, the inadequacy of existing provisions and ambiguity in their legal interpretation. This results in loopholes, which make it easier for the presence of mercenaries, or their recruitment, without reference to their status, to appear to be within the law.

54. In the light of the foregoing, the Special Rapporteur maintains that the relevant international legal instruments are but imperfect tools for dealing with the issue of mercenaries. There are difficulties in applying article 47 of Additional Protocol I to the 1949 Geneva Conventions to a broad range of cases involving mercenary activities; mercenarism is not classified as an offence under the internal criminal law of many countries; and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has yet to enter into force.

C. Private security companies and mercenary activities

55. In the last two reports submitted, one to the General Assembly and the other to the Commission on Human Rights, the Special Rapporteur broached the subject of private companies operating in the international market offering security and representing themselves as providing expert assistance, largely in military training. In addition, such companies are generally part of holdings and are therefore able, through other companies, to take part in various services which complement and enhance their offer: transport, communications, economic and financial consultancy, health, sanitation services, and so on. In the earlier reports the Special Rapporteur suggested that this was a new operational model, clearly more up to date and effective and with a relatively adequate legal cover, but nevertheless linked to mercenary activities and involving activities which it was more prudent to entrust to State authorities than to abandon to the vagaries of free-market competition.

56. Today, when the activities of such companies in various countries, with varying results, is apparent, when there have been instances of international outrage as a result of popular rejection in some countries of the intervention of such companies in internal matters related to the sovereignty of the State and of the contracts, worth millions, signed with Governments seeking their services, the issue inevitably arises of what these companies mean for the self-

determination of peoples, security and peace, as international law has defined these concepts and entrusted related responsibilities to the United Nations.

57. It is clear that these companies offer themselves as a kind of alternative security model for countries with internal conflicts which Governments have difficulty in managing. The premise underlying their offer is that they fill a critical void, since there are Governments which are unable to provide security, and the international machinery does not generally anticipate the worsening of rapidly deteriorating situations moving towards armed conflict or generalized confrontation, or respond with the degree of urgency that a disturbance threatening the lives of entire populations demands. In fragile countries, where Governments are close to collapse, the presence of such private companies which, relying on the experience of military professionals, sell security, strategic planning, order, reorganization of the military apparatus of the State, protection to allow productive capacity in respect of major natural resources to be regained, short-term neutralization of zones where there is armed conflict and so forth, may be, and in fact is, well received by segments of the population.

58. But the point is that the effectiveness of the services they offer and the fact they are hired by legitimate Governments cannot be confused with the nature of the acts they carry out. They imply a kind of "formally tolerated mercenary intervention", where, in reality, the State has abdicated its substantive responsibilities to profit-seeking organizations and where memories of old colonial companies are inevitably evoked. Today's companies are, of course, more modern, and their intentions smack less obviously of transnational neocolonialism. But the danger exists for a number of territories in Africa and any other continent or archipelagic zone where there are States in possession of significant natural resources or a strategic location, which are experiencing acute problems of poverty, internal confrontation and ungovernability.

59. The composition of these private security companies leaves no room for doubt. The major shareholders and management board members are people with professional military experience, and in those which have been set up in South Africa, the United Kingdom of Great Britain and Northern Ireland and Barbados, their records identify them as mercenaries who have taken part in various armed conflicts. As a general rule, the contracts they sign constitute acts of intervention in the internal affairs of a State, although consented to by the Government, where an essentially military function is carried out in exchange for a handsome recompense. There is a clear association between such conduct and mercenary acts, although in formal terms there has been a change from the traditional mercenary since mercenaries are now hired by a company which trains them to provide technical services, less bloody, perhaps, with the focus on organizing effective internal security machinery, guaranteeing public order and putting an end to armed conflicts on behalf of the Government hiring them and providing them with authority to intervene.

60. This is probably the most controversial aspect. Companies conclude these contracts with Governments which represent the State. But the problem lies in the fact that responsibility for internal order and security in a sovereign country is an obligation which may not be renounced or transferred and which the State discharges through its police and armed forces. If it hands over such

authority to a private company, and a foreign private company at that, it is agreeing to a limitation of State sovereignty, with the further drawback that the substantive legal rights of its inhabitants may be impaired and basic human rights principles and norms of humanitarian law may be violated.

61. There are private security companies operating in the international market; those countries which have signed contracts allowing them to intervene in internal affairs are known; the negative reaction which such activities have engendered among broad segments of the population in the countries where they have operated or are operating is also known. The point is that, without prejudice to acceptance of the market as a natural and regulated phenomenon in which all countries participate as best they can, the international community cannot accept, without undermining the principles on which it is based, that a function of the free market should be selling security operations the practical effect of which is to allow intervention in internal affairs by paramilitary forces with a mercenary component. In terms of human rights, making internal order, the security of the individual and control over the exercise of civil liberties the responsibility of private international security companies is simply unacceptable. A situation such as the one described is unimaginable in developed countries, which enjoy political stability and have a comprehensive institutional framework. Why should poor countries affected by instability have to add to their sufferings a situation in which private companies, in exchange for vast earnings which have a negative impact on existing poverty, take over security and control in practice the most important decisions of the State. What will then become of the independence and sovereignty of such States? The most likely outcome is that problems will, in substance, persist and become worse when the companies withdraw. If the situation obliges them to remain indefinitely, is it not true to say that the independence of the State will have disappeared?

62. This new operational model, as typified by Executive Outcomes (PTY) Ltd., with which the Special Rapporteur became acquainted during his mission to South Africa in October 1996, consists in offering skilled military training, protection and internal security services internationally in return for large amounts of money and profits from the development of the natural resources of the place where the services are provided. Foreign firms investing in countries with significant natural resources are reportedly demanding that the security of the areas where their investment is concentrated should be provided by personnel recruited, trained and made available by the companies that sell security internationally. These companies generally organize the services they offer by recruiting foreign staff with military and police experience and, in some cases, links to mercenary activities. This has naturally given rise to a great deal of concern and mistrust, since what is mainly offered is security, which, in the modern State drawing its inspiration from eighteenth and nineteenth century liberalism, is exclusively the responsibility of the State and an expression of its sovereignty. A number of companies of the type described are operating in various countries throughout the world. In March 1997, for example, Sandline International was in the news because its contract with the Government of Papua New Guinea caused a public outrage. But the first to become established was Executive Outcomes, registered in Pretoria and London, which presents an interesting case study, as we indicated to the Commission on Human Rights. Executive Outcomes was founded in Pretoria in 1989 by former members of the

special forces of the South African Defence Force (SADF) with experience in the repressive activities of the apartheid regime. Executive Outcomes operated under formally concluded contracts, according to company sources, providing military advice and training to the army of President Dos Santos of Angola, from which country it withdrew in January 1996. It also provided security to mining and oil companies. It was later active in Sierra Leone.

63. Is Executive Outcomes a legally constituted private company behind whose facade are hidden mercenary activities, which have been changed and modernized in the legal configuration of its operations without really ceasing to be essentially mercenary in nature? The answer to this question is intrinsically complex and goes beyond the scope of this report. However, some questions should at least be raised for consideration by the General Assembly in developing the outlines for an ad hoc report that would essentially focus on the type of company and on the implications of the international sale of security for State sovereignty, self-determination and human rights.

64. It should first of all be established that, although Executive Outcomes operates from Pretoria and is legally constituted, it is not a company with links to, or which is close to, the current Government of South Africa. Indeed, various governmental authorities have distanced themselves from and condemned the activities of Executive Outcomes, as indicated in their decision to submit to Parliament a bill that would restrict and regulate the legal existence of such companies in South African territory. It is even probable that when this report comes before the General Assembly, the bill submitted to the South African Parliament will have been approved. In general terms, such a bill would regulate the international sale of security services and military assistance in terms similar to those governing the export of weapons from South Africa.

65. By its own definition, Executive Outcomes is a company devoted to "providing highly skilled and confidential military adviser services" and to furnishing personnel, mainly military and highly skilled, to provide strategic and tactical training services in countries requiring sophisticated, effective support for the adequate control of their socio-political reality, to put an end to internal conflicts and to encourage the development of economic activities related to natural and mineral resource development. Underlying these services is the fact that they are offered because there are States in such crisis that they are no longer capable of safeguarding their borders, public order and the security of the population. In this context of crisis, which also involves distrustful, precarious relations with other States, a vacuum is created which is precisely what leads to the establishment of private companies selling security services. This is the case of Executive Outcomes and its holding company, Strategic Resources Corporation (SRC), which is working in several countries with a profile similar to that described earlier. It is also the case of, among others, Keeni Mini Services, the British firm British Defence Systems (Ltd.), the United States firm Military Professional Resource Institute, and Sandline International, which maintain close ties with one another.

66. According to its description, Executive Outcomes is a "security company" which provides technical advisers whose area of specialization is basically military. Its personnel provides training for situations such as: low-grade armed conflicts with counter-insurgency preparation, enemy infiltration,

intelligence, sabotage, protection of the population and the territory; infantry training, including motorized and parachute infantries; use of tanks; artillery and anti-aircraft artillery defence; combat engineering training; intelligence; military police; medical support services; communications; special rapid reaction forces; officer and support staff training; logistics; air force; navy; and technical support.

67. As stated, Executive Outcomes is not the only company of this kind in the world, but it is the most important of those operating in Africa, although its range extends to eight non-African countries in the Middle East, Asia and Eastern Europe. The risk that several companies of this kind may be competing in the market and may come into confrontation over unlawful resources is a potential danger which the case analysis must not overlook. Companies such as Executive Outcomes recruit highly qualified military personnel to provide their services. In Executive Outcomes, they are mainly former members of the South African and foreign security forces. According to the information obtained, about 700 persons are regularly employed by this company (soldiers, police, doctors, pilots, engineers, technicians, etc.), with high salaries; the salaries of every rank from general to non-commissioned officer may be five times higher than in an army such as that of South Africa and definitely 10 times higher or more than in other African States.

68. With regard to weapons and logistics, Executive Outcomes uses equipment purchased from companies in South Africa and various European countries. Part of the equipment includes aeroplanes, helicopters and aerial photography aircraft. Strategic Resources Corporation has an airline, Ibis Air (charter flights), which it uses to transport personnel and logistical consignments to various countries in which it is active. Executive Outcomes' tendency is, naturally, to grow and expand its interests, and this leads to its involvement in armed conflicts in the countries it assists and to its participation, which may be direct or through its subsidiaries, in internal affairs, such as the economy, resource development and capital investment. Although this is a matter of a private company being involved in intrinsically complex military services, the company is determined to prove that its activities are above board and that it is professionally efficient.

69. Are the personnel recruited by Executive Outcomes mercenaries? There is no simple and straightforward answer to this question. For most of the international law experts and international human rights non-governmental organizations consulted, Executive Outcomes is a mercenary company which works with mercenaries and carries out mercenary activities. Its executives vehemently deny this, claiming that they are "Africans" who have decided to work for the viability and development of Africa, doing so from the military standpoint, with which they are most familiar, and which is why they work in the security field. They also insist that, formally speaking, Executive Outcomes is a commercial security company whose registration and operation are not contrary to South African and international law. They also argue that they conclude contracts only with legitimately constituted Governments and always in order to do work designed to strengthen their internal stability and thus the possibility of putting economic development policies into practice.

70. The legal framework for mercenary activities is, of course, not clear and specific enough. Executive Outcomes' arguments about the lawfulness of its activities are therefore not to be ignored. The open debate on companies such as Executive Outcomes nevertheless involves the interpretation of legal provisions such as article 47 of Protocol I Additional to the Geneva Conventions. Persons who object to Executive Outcomes say that its personnel are mercenaries because they meet all the requirements for classification as mercenaries under that provision: they are military personnel recruited in South Africa or abroad in order to fight in an armed conflict; in the African countries with which they signed contracts, they not only trained personnel for the armed forces of these countries, but took part in the hostilities for personal gain and for sums substantially in excess of what the military personnel of the countries they assisted received; and they are not nationals of those countries, but foreigners, and were not sent on official duty as members of the armed forces of South Africa or any other State which was not a party to the conflict.

71. These are convincing arguments; however, in the light of the restrictive approach adopted in various United Nations resolutions which link mercenaries with concerted acts of violence aimed at violating the right of peoples to self-determination and undermining the constitutional order of a State or its territorial integrity, while seeking to obtain substantial gain and material compensation, the contracts which private military advisory, training and security companies conclude with States and the personnel working for these companies have some mercenary traits but cannot be described as being wholly mercenary.

72. It is obvious that the gaps in existing legislation and the insecurity which prevails in many countries, as well as the end-of-century tendency to privatize everything in sight, have created the conditions for the establishment of this new type of company, which is organized to sell security in the international market to client countries from which it obtains contracts worth millions, protection and links to powerful companies dealing in oil, minerals and precious stones; the results are the growth and expansion of these companies and their presence in the countries with which the contractual relationship has been established.

73. In view of the complexity and the implications of the issue, it is better not to hurry to reach any definite conclusions. The point is that there is now a type of company which offers full security services on the free and globalized international market that up to now have been the exclusive responsibility of each State's own internal security system. If States are prepared to give up an intrinsic element of their sovereignty, this is something which should be clearly stated and which the General Assembly should analyse in depth because it really would affect and change the nature, structure and functions of the State, while at the same time changing the nature of international relations.

74. A non-exhaustive list of topics which require further and more detailed investigation should include possible changes in the conduct of mercenaries, as defined since the establishment and organization of national armies, because it is undeniable that large numbers of them have been joining private companies which provide security internationally. It should also be borne in mind that

responsibility for a country's internal order and security are peremptory obligations which a State fulfils through its police and armed forces. Turning these responsibilities over to private companies registered in third countries would be to restrict the sovereignty of the State whose Government signed such a contract or to cede part of that sovereignty to a company, in return for which it would exercise the rights of the State police or those involved in defending territorial integrity or the population.

75. Sovereignty would thus continue to be exercised by the State, but it might be dangerous and destabilizing for the State to assume responsibility for any abuses that the security companies might commit against the civilian population or when these private companies put their relations with multinational oil, mineral, chemical and other companies first, and through the use of their military resources, impose the political, economic and financial hegemony of their business partners. If such a situation should arise, the weak countries, which might, because of their institutional problems, be tempted to become clients of these powerful companies, may simply have given the first coup de grâce to their own State and have paved the way for the multinational neocolonialism of the twenty-first century.

76. In view of the concerns expressed in the preceding paragraphs, it would also be appropriate for the competent United Nations bodies to discuss the international lawfulness of allowing the free market to include completely unrestricted competition from companies selling security services and the risk of interference in internal affairs by agents who, claiming to be experts, might actually be intelligence agents from third States, mercenaries, saboteurs or other elements whose assignment is to dominate, dissociate and weaken the receiving State. Of course, these are hypothetical situations arising out of the changing reality of traditional mercenary activities and their partial replacement by private security companies specializing in military matters. The problem should remain under study; it has to be solved on the basis of more in-depth knowledge of the facts, specific references and a systematic analysis concluding with suggestions and proposals for the adoption of political, legal and operational standards relating to mercenary activities and to companies which sell security internationally.

77. Lastly, it should be recalled that in unusually dangerous situations, regional organizations, the international community and especially the United Nations could have available advisory systems to support States in danger of succumbing to chaos and calling upon these companies to take charge of their security. It is obvious that the sovereignty of States and the security of the population would be better safeguarded by United Nations rapid-reaction or peacekeeping forces. In any event, the international systems cannot overlook the perils which loom over weak and crisis-ridden States. One positive step would be an increased will to take preventive actions that can neutralize resort to the use of force. What is needed specifically is to show that the systems for the protection of human rights and peace and security are capable of implementing efficient and convincing mechanisms to promote life, a relaxation of tensions and positive agreements for peaceful cooperation, and are more effective at doing so than these companies which derive material benefits from the weakness of Governments that are unable to control order and security in their countries.

V. PRESENCE OF MERCENARIES IN PAPUA NEW GUINEA

78. Since 1988 the Special Rapporteur has been closely monitoring the changing situation in the conflict on the island of Bougainville in Papua New Guinea, especially implementation of the measures adopted in order to achieve a peaceful solution to a conflict which has already caused more than 7,000 civilian deaths (many due to the lack of timely medical care, as well as to improve the human rights situation in general. In that context, he welcomed the signing of the Honiara commitments on 3 September 1994 by the Prime Minister of Papua New Guinea, Sir Julius Chan, and the Commander of the Bougainville Revolutionary Army, Mr. Sam Kauona. Pursuant to the Honiara commitments, a ceasefire agreement between the Government of Papua New Guinea and the Bougainville Revolutionary Army was signed on 8 September 1994, and in October of 1994 a peace conference was held which was attended by representatives of the various political factions. Unfortunately, the peace process did not unfold as planned and a number of events, including the assassination of the rebel leader Théodore Miriong in October 1996, resulted in renewed military action.

79. The Special Rapporteur has learned that, given the situation, the Prime Minister decided to sign a contract with Sandline International, a company registered in the Bahamas with offices in London, under which that company is to provide various military assistance services to the Papua New Guinea Defence Forces. According to the terms of the contract, concluded on 31 January 1997, Sandline International undertook, inter alia, to:

(a) Provide advice and military assistance to the Papua New Guinea Defence Forces with a view to supporting them in their task of protecting the territorial sovereignty of the country and retaking control of important national resources, especially the mineral deposits in Panguna;

(b) Provide tactical training for the Special Forces Unit (SFU);

(c) Furnish intelligence services in support of military operations;

(d) Conduct offensive military operations in Bougainville in conjunction with the Papua New Guinea Defence Forces for the purpose of neutralizing the forces of the Bougainville Revolutionary Army and of regaining control of the Panguna mine; and

(e) Provide adequate follow-up to those actions by means of specific operations which would be defined in other agreements.

80. In order to furnish the military assistance described above and to participate in military operations, Sandline International undertook specifically, inter alia, to:

(a) Send a 16-man command, administration and training team in the first week of implementation of the contract in order to establish the necessary liaison with the Papua New Guinea Defence Forces; develop logistical and communications infrastructure; prepare for the safe arrival of the military and aeronautical equipment contracted for; initiate the information-gathering and intelligence operations and begin training the Special Forces Unit;

(b) Set up bases at Jackson Airport and la Selva training centre in Wewak;

(c) Within 10 days of the arrival of the command, administration and training team, send and deploy the following throughout the territory of Papua New Guinea: Special Forces officers and troops, aircraft and helicopter crews, engineers, intelligence agents, special teams of operatives, mission troops, medical and paramedical personnel, and so forth;

(d) Send arms, ammunition and equipment, including aircraft, helicopters, electronic warfare equipment and communications systems, as well as any personnel necessary for their maintenance and for training in their use;

(e) Ensure that personnel sent to the country have appropriate identity papers, and assume responsibility for any expense caused by loss of its personnel, unless that loss was the result of negligence by the State.

81. In return, the Government of Papua New Guinea undertook to pay Sandline International US$ 36 million for the three-month initial period of the contract, to grant to Sandline International's expatriate personnel all tax exemptions, facilities and privileges in connection with their entry into, departure from and stay in the country and with the import of their goods and equipment and, in general, to grant all the authorizations, waivers, permits and licences necessary for them to fulfil their contractual obligations. The Government also undertook to instruct its civil servants and the members of the Defence Forces to recognize the military ranks of the company's personnel as established by the command structure and, accordingly, to obey orders from higher-ranking company personnel.

82. The Government also recognized that Sandline International's personnel were authorized to commit themselves to or initiate or fight in military operations, repel attacks, arrest and detain persons suspected of planning an act of aggression or of conspiring to do so and, in general, defend the population from threats of any kind.

83. At the end of March 1997, 40 of Sandline International's personnel, mostly South Africans, were forced to leave Papua New Guinea as a result of widespread protests within the Defence Forces at the signing of the contract described above and of mutinies in Port Moresby, the capital of the country. The leader of the group, Tim Spicer, a British citizen, was confined to quarters in the capital and his passport was confiscated. The Commander-in-Chief of the Defence Forces, Brigadier General Jerry Singirok, was dismissed by the Prime Minister for criticizing the conclusion of the contract and the dispatch of the company's first instructors to the front in Bougersee. On 18 March 1997, the army protested against the dismissal of its Commander-in-Chief, mutinied at the Murray Barracks and marched on Parliament. General Singirok later accepted his dismissal but requested that a commission of inquiry should be set up to investigate the Sandline International contract. On 26 March 1997 the Government agreed to appoint a commission of inquiry. The Special Rapporteur has contacted the Government of Papua New Guinea requesting information concerning those events and hopes to be informed of the conclusions of the commission of inquiry.

84. Although the commission's conclusions are not yet known, the available information concerning the crisis in Papua New Guinea suggests that it was triggered by the implementation of the contract between the Government of Papua New Guinea and the private security company Sandline International. For the armed forces and the population, the presence of foreign soldiers recruited by a foreign company, which was responsible not only for training but also for commanding military operations in an internal armed conflict, thereby subjecting the country's military leaders to its orders, and which received for the initial period of the contract (three months) $36 million, was considered to be an act that violated sovereignty and the right to self-determination. The shared perception of being faced with a mercenary presence under contract to the Government via a private company was without any doubt a clearly expressed fact in the indignation of both the armed forces and the population of Papua New Guinea. In addition, the use of mercenaries was noted by the international community.

VI. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

85. By resolution 44/34, of 4 December 1989, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Pursuant to article 19, the International Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General. At the time this report was written, only 11 States had completed the process of expressing their willingness to be bound by the international Convention: Barbados, Cameroon, Cyprus, Georgia, Italy, Maldives, Seychelles, Suriname, Togo, Turkmenistan and Ukraine; while the following 11 States had signed the International Convention: Angola, Belarus, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay and Yugoslavia.

86. The International Convention confirms the legal nature of the resolutions and declarations of United Nations bodies condemning mercenary activities, and it expands international regulation of the question, such regulation being at present essentially limited to article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 and the 1977 OAU Convention for the Elimination of Mercenarism in Africa. The entry into force of the International Convention will contribute to the accurate identification of situations involving mercenaries, the effective prosecution and punishment of offenders, and the clear determination of jurisdiction in each case, and will help to facilitate extradition procedures and preventive cooperation among States.

VII. CONCLUSIONS

87. Mercenary activities are a form of violence, condemned by United Nations bodies, which has been used to hamper the exercise of the right to self-determination of peoples and to violate human rights. Mercenaries tend to be present mainly in international or internal armed conflicts, where they offer their services to one or more parties to the conflict in exchange for payment,

causing serious damage to the people and territories that are victims of their actions.

88. Mercenary activities are not restricted to the context of what affects the principle of self-determination of peoples. The Special Rapporteur has detected an expansion in mercenary activities, observing that mercenaries are involved in serious crimes, such as terrorist attacks and drug and arms trafficking, in which they are usually the perpetrators of serious violations of human rights.

89. Since mercenary activities and the conduct of the mercenary per se can seriously impair the enjoyment of human rights, the self-determination of peoples, the stability of constitutionally established Governments and the maintenance of international peace and security, mercenary activity and conduct must be clearly and unequivocally banned.

90. In their current state, international provisions relating to mercenaries contain gaps or are inadequate and ambiguous, giving rise to problems of contradictory interpretation. This situation, which is compounded by the fact that, in the legislation of most countries, mercenarism is not classified as a separate crime and by the fact that there are not in all cases extradition agreements guaranteeing punishment, facilitates the perpetration of criminal acts by mercenaries and, very often, their impunity.

91. Some events that have taken place in countries in Africa, Europe and Oceania in recent years indicate not only that mercenary activities still exist but that the nature of them is changing. The establishment of companies to sell countries military advisory, training and security services in return for money and mining and energy concessions, in particular, may, in addition to the problems such contracts pose for the sovereignty of the States that conclude them, lead to the recruitment of mercenaries who will become involved in internal affairs, thus representing a threat to the people exposed to their activities.

92. Where such direct participation does in fact exist, the companies can come to take control of the country's security and also exert considerable influence on production and economic, financial and commercial activities. Companies of this kind which market security internationally may acquire a significant, if not hegemonic, presence in the economic life of the country in which they operate. The special relationship they establish with the country concerned creates an environment in which corruption can thrive.

93. If the type of company described in the preceding paragraph becomes widespread, the concept of security that the international community has had until now and the responsibility of each State to be accountable for and to guarantee, through its police forces, that each individual is able to exercise his rights and freedoms as a citizen will have been superseded by a new concept. According to this new concept, it would appear that any State is at liberty to buy military assistance and security services on the international market from organizations composed of persons of various nationalities, united by their function and their ability to control, punish and impose the order desired by the Government which hires them, regardless of the cost in lives, in exchange for money and the surrender of a portion of the State's natural resources.

94. The increase in companies engaged in the international sale of security could significantly alter the currently accepted concept of mercenary activity. Mercenary activity would no longer be considered as necessarily unlawful, illegitimate or illegal, while concepts such as that of State sovereignty and the obligations of a State towards its people and towards the observance and guarantee of the enjoyment of human rights would be tremendously and dangerously relativized.

95. Despite the fact that more than seven years have passed since its adoption by the General Assembly, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has been ratified by only 11 States. The delay in its entry into force of itself encourages the continuation of this criminal activity.

VIII. RECOMMENDATIONS

96. Considering that mercenary activities have become diversified and are undergoing a transformation, acquiring characteristics that make them far more of a threat to the enjoyment of human rights, the General Assembly should reaffirm its condemnation of these activities and, additionally, suggest to all States that they should incorporate practical measures in their national legislation to prohibit the use of their territory for the recruitment, training, assembly, transit, financing and use of mercenaries.

97. The united front which the international community should present in acting against mercenary activities is weakened because legal gaps and inadequacies, which are used to conceal mercenary activities and even to endorse the recruitment and employment of mercenaries, are tolerated. It is therefore recommended that mercenary activity should be treated in every respect as an unlawful and prosecutable act and a continuing offence. Given the legal gaps and inadequacies which permit the existence of mercenaries whose activities can pass as normal, it is recommended that the General Assembly should propose that the States Members of the United Nations should consider adopting legislation to prohibit mercenary activity and the use of national territory for such unlawful acts.

98. In view of the harm which the delay in the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries is causing at the regulatory level, it is recommended that the General Assembly should appeal to States for understanding so that they will decide to ratify or accede to the Convention and bring it rapidly into force.

99. In what appears to be a new international trend, legally registered companies are providing security and military advisory and training services to the armed forces and police of legitimate Governments. There have been complaints that some of these companies recruit mercenaries and go beyond advisory and instruction work, becoming involved in military combat and taking over political, economic and financial matters in the country served. It is therefore recommended that the evolution of these companies, the relevant legislation of States and the conditions under which States agree to conclude contracts with such companies should be monitored closely. It needs to be

assessed whether the security and internal order of a State which has lost part or all of its capacity to keep order should henceforth be left to the action of specialized companies that will take charge of its security.

100. In particular, it should be investigated whether the sole effect of hiring a company to provide security, consultancy and military assistance in Sierra Leone was to create an illusion of governability while the real problems of the country were left untouched, and whether in itself this represented a source of weakness which at some point must necessarily have affected the stability of the legitimate Government of that country.

101. Another matter to be investigated is the hiring of a similar company by the Government of Papua New Guinea, which handed over to it functions that went far beyond the provision of advisory services and military assistance and included participation in combat. The General Assembly should specify that the preservation of the territorial integrity of a State does not authorize granting such functions and powers to private companies.

102. The General Assembly should call for a study on ways of reinforcing international prevention, action and intervention machinery in order to strengthen the exercise of human rights and promote the rule of law in countries threatened or weakened by armed conflicts, thereby ensuring that the hiring of private companies to take part in military or punitive campaigns is ruled out once and for all in practice and prohibited once and for all in international legislation.

103. Lastly, in view of the problems, circumstances and events described in this report, it is recommended that the General Assembly should request the Special Rapporteur to investigate more closely the possible involvement of mercenaries in the international sale of military assistance and security, with a view to making proposals for a better legal classification of private companies that offer these services internationally, precluding the presence of mercenaries, and safeguarding the sovereignty of States and their non-transferable responsibility in matters of law enforcement and internal security.

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/52/496
17 October 1997
ENGLISH
ORIGINAL: SPANISH

Fifty-second session
Agenda item 112 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur charged with investigating the situation of human rights in the Republic of Zaire (now Democratic Republic of the Congo), pursuant to Commission on Human Rights resolution 1997/58 of 15 April 1997.

Annex

REPORT OF THE SPECIAL RAPPORTEUR CHARGED WITH INVESTIGATING THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF ZAIRE (NOW DEMOCRATIC REPUBLIC OF THE CONGO), PURSUANT TO COMMISSION ON HUMAN RIGHTS RESOLUTION 1997/58

CONTENTS

		Paragraphs	Page
Abbreviations			5
I.	INTRODUCTION	1 - 28	6
	A. Mandate	1 - 4	6
	B. Joint mission on massacres occurring in eastern Zaire	5 - 7	6
	C. Investigating team appointed by the Secretary-General	8 - 9	7
	D. Activities of the Special Rapporteur	10 - 18	7
	E. The Special Rapporteur and the authorities of the former Zaire and of the Democratic Republic of the Congo	19 - 21	9
	F. International obligations of the Democratic Republic of the Congo	22 - 27	9
	G. Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo	28	10
II.	THE WAR OF LIBERATION AND INSTITUTIONAL CHANGE	29 - 35	10
III.	HUMAN RIGHTS AND DEMOCRACY	36 - 84	12
	A. The demise of an authoritarian regime	37 - 42	12
	B. The installation of a new regime: authority in the so-called "liberated" territories	43 - 50	13
	C. The new power structure	51 - 73	14
	D. Transboundary nationality	74 - 78	17
	E. Promises of a new democratic order and the reality	79 - 84	18

CONTENTS (continued)

		Paragraphs	Page
IV.	CURRENT ARMED CONFLICTS	85 - 92	19
	A. Continuing war in Northern Kivu	86 - 89	19
	B. Activities of the Conseil de la résistance et de la libération de Kivu	90	20
	C. Calls to resistance by generals of the former Zairian armed forces	91	20
	D. Violence against Cabindan leaders in Bas-Congo	92	20
V.	SITUATION IN THE REFUGEE CAMPS	93 - 100	20
VI.	HUMAN RIGHTS UNDER THE REGIME OF MARSHAL MOBUTU	101 - 124	22
	A. Right to life	103 - 106	22
	B. Right to physical and psychological integrity	107	23
	C. Right to security of person	108 - 110	23
	D. Right to liberty of person	111 - 112	23
	E. Right to freedom of opinion	113 - 114	24
	F. Right to freedom of association	115	24
	G. Right to freedom of assembly	116	24
	H. Economic, social and cultural rights	117 - 119	24
	I. Situation of children	120	25
	J. Situation of women	121 - 124	25
VII.	HUMAN RIGHTS IN THE LIBERATED AREAS AND UNDER THE GOVERNMENT OF PRESIDENT KABILA	125 - 208	26
	A. Right to life	128 - 138	27
	B. Right to physical and psychological integrity	139 - 148	29
	C. Right to security of person	149 - 152	31
	D. Right to liberty of person	153 - 161	31
	E. Right to privacy	162	33

/...

CONTENTS (continued)

		Paragraphs	Page
F.	Procedural guarantees	163 - 174	33
G.	Right to freedom of opinion	175 - 181	36
H.	Right to freedom of association	182 - 189	37
I.	Right to freedom of assembly	190 - 193	39
J.	Economic, social and cultural rights	194 - 198	40
K.	Situation of children	199 - 200	41
L.	Situation of women	201 - 208	41
VIII.	CONCLUSIONS AND RECOMMENDATIONS	209 - 239	42
A.	Conclusions	209 - 224	42
B.	Recommendations	225 - 239	44

Abbreviations

AFDL	Alliance des forces démocratiques pour la libération du Congo-Zaïre
ANR	National Information Agency (Agence nationale de renseignements)
APR	Rwandan Patriotic Army
AZADHO	Association zaïroise pour la défense des droits de l'homme
CADDHOM	Collectif d'action pour le développement des droits de l'homme
CNONGD	Conseil national des organisations non-gouvernementales de développement
CNS	National Sovereign Conference (Conférence nationale souveraine)
FAR	Rwandan armed forces
FAZ	Zairian armed forces
FONUS	Forces novatrices pour l'union et la solidarité
HCR-PT	Supreme Council of the Republic-Transitional Parliament (Haute Conseil de la République-Parlement de Transition)
MNC/L	Mouvement national congolais/Lumumba
MPR	Mouvement populaire de la révolution
PALU	Parti lumumbiste unifié
PANADI	Parti des nationalistes pour le développement intégral
RDC	Democratic Republic of the Congo
SARM	Action and Military Information Service (Service d'action et de renseignements militaires)
SNIP	National Intelligence and Protection Service (Service national d'intelligence et de protection)
UDPS	Union pour la démocratie et le progrès social
UFERI	Union des fédéralistes républicains indépendants
UNHCR	Office of the United Nations High Commissioner for Refugees
VSV	Voix des sans voix pour les droits de l'homme

I. INTRODUCTION

A. Mandate

1. In 1994, the Commission on Human Rights, concerned about the persistent seriousness of the situation of human rights in Zaire, appointed a Special Rapporteur to report to it at its next session (resolution 1994/87 of 9 March 1994). The Commission renewed the Special Rapporteur's mandate by its resolutions 1995/69 of 8 March 1995, 1996/77 of 23 April 1996 and 1997/58 of 15 April 1997, after having considered his reports.[1] In resolution 1997/58, the Commission also requested him to submit an interim report to the General Assembly. The present report has been drawn up pursuant to that resolution and comprises information received up to 8 September 1997.[2]

2. The Special Rapporteur's mandate encompasses all the human rights set forth in the Universal Declaration of Human Rights and in the International Covenants, to which the now Democratic Republic of the Congo is a party.

3. The Commission will thus have a picture of the human rights situation in that country from 1 January 1994 to 31 December 1997.

4. However, neither this interim report nor the final report to be submitted to the Commission at its fifty-fourth session will cover violations of human rights and of international humanitarian law falling under the mandate of the joint mission also established by Commission resolution 1997/58.

B. Joint mission on massacres occurring in eastern Zaire

5. Commission resolution 1997/58 requested the Special Rapporteur on the situation of human rights in Zaire, the Special Rapporteur on extrajudicial, summary and arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out a joint mission to investigate allegations of massacres and other issues affecting human rights which had arisen from the situation prevailing in eastern Zaire since September 1996 and to report to the General Assembly by 30 June 1997 and to the Commission at its fifty-fourth session.

6. The mandate of the joint mission arose from a proposal made by the Special Rapporteur on the situation of human rights in Zaire following a mission to eastern Zaire in March 1997[3] carried out at the request of the United Nations High Commissioner for Human Rights. The Commission acted on the proposal, with two modifications: (a) it did not include the Special Rapporteur on the question of torture; and (b) it set September 1996 as the starting date for the investigations, something which the Special Rapporteur had not suggested.

7. The joint mission, which was not allowed to enter the then Zairian territories under the control of the Alliance des forces démocratiques pour la libération du Congo-Zaire (AFDL), submitted the requested report to the General Assembly (A/51/942) and will, in due course, submit the report to the Commission, in which the work of the investigating team appointed by the Secretary-General will be considered.

C. Investigating team appointed by the Secretary-General

8. Because the Commission's joint mission was refused entry into the Democratic Republic of the Congo, the Secretary-General, on 15 July 1997 in a letter addressed to President Kabila, set up a team to investigate the serious violations of human rights and international humanitarian law allegedly committed in the Democratic Republic of the Congo (formerly Zaire) since 1 March 1993. The team is to report to the Secretary-General by December 1997 at the latest.

9. The mandate of the investigating team covers the same events as those which the Commission, in its resolutions 1984/87, 1995/69, 1996/77 and 1997/58, charged the Special Rapporteur with investigating, but also covers the last nine months of 1993.

D. Activities of the Special Rapporteur

10. On 4 July 1997, the Special Rapporteur requested the Minister for Foreign Affairs of the Democratic Republic of the Congo to allow him to visit the country from 4 to 16 August, as he had done in previous years. The Government did not acknowledge receipt of the letter until 4 September, and did not actually reply to it.[4]

11. During the year, the Special Rapporteur held two rounds of consultations, lasting 15 and 5 days respectively, in Geneva.

12. On his visit to Goma in March, during his visits to Nairobi and Geneva, during his stay in Kigali as a member of the joint mission and during stays for private reasons in Canada, France and Washington, D.C., the Special Rapporteur received a great deal of written and oral information from immediate victims, relatives of victims, exiles, leaders of non-governmental organizations, members of political parties, priests, ministers and religious leaders, journalists and lawyers, which was enormously useful to him in preparing this report. The reports of the office of the United Nations High Commissioner for Human Rights in Kinshasa were also important.

13. Human rights organizations whose public reports were consulted or whose leaders were interviewed included the following: Association zaïroise pour la défense des droits de l'homme (AZADHO); Association des étudiants zaïrois de Strasbourg; Association nationale pour la défense des droits des migrants et ceux de la femme; Association des cadres pénitentiares; Collectif d'action pour le développement des droits de l'homme (CADDHOM), Southern Kivu; Collective des associations féminines pour le développement; Comité de solidarité Palermo-Bukavu; Comité pour la démocratie et les droits de l'homme (CDDH); Haki Za Binadamu de Maniema; Conseil national des organisations non-gouvernementales pour le développement (CNONGD); Forum pour le développement du Nord-Kivu (FODENOK); Fraternité des prisons au Zaïre; Groupe Amos; Groupe Jérémie; Groupe Lotus, Kisangani; Grande vision; Ligue des droits de l'homme; Ligue des électeurs; Ligue pour la défense des droits de la personne dans la région des Grands Lacs (LGDL); Les Amis de Nelson Mandela pour la défense des droits de

l'homme; Mouvement de femmes pour la justice et la paix; International Society for Human Rights (ISHR), Zaire section; Synergie Africa; Toges noires; and Voix des sans voix pour les droits de l'homme.

14. Statements, reports and communications from the Union pour la démocratie et le progrès social (UDPS) and the Parti des nationalistes pour le développement intégral (PANADI) were considered, and some of their leaders were interviewed.

15. The Special Rapporteur also held interviews with or heard reports and testimony from some very reliable international organizations with a general mandate or one related to the human rights situation in the Democratic Republic of the Congo, such as: International Human Rights Law Group; Fédération Internationale des ligues des droits de l'homme (FIDH); Human Rights Watch/Africa; Amnesty International; Action des chrétiens pour l'abolition de la torture (ACAT); Association Rhône-Bas-Zaire (Congo); Association de solidarité internationale (ASI); Centre d'information, de recherche et de solidarité avec le Congo (COZI); Service oecuménique d'entraide (CIMADE); Comité d'échanges Isère-Kivu; Comité de jumelage de Villefontaine (Isère); Frères des hommes; Groupe de recherches et d'échanges technologiques (GRET); Association des ingénieurs d'agriculture sans frontières (AIDASF); Avocats sans frontières (ASF); Médias libres, médias pour tous; Ingénieurs sans frontières (ISF); Médecins du monde; Survie; Terre des hommes/France; Agir ensemble pour les droits de l'homme; Union des associations spécialisées dans la matière électorale; and Info-CIAM. In Geneva, he interviewed in May and August Godefroid Marume Mulume, Counsellor of the Permanent Mission of Zaire (subsequently Democratic Republic of the Congo) in Geneva.

16. The Special Rapporteur gave special consideration to a report on the situation in Kivu drawn up by a commission appointed by the Lutheran Evangelical Church, headed by Bishop Kasukuti Ngoy and made up of other eminent persons. The report makes a point of saying that it was possible to set up the commission thanks to the endorsement of the AFDL authorities.[5] Nevertheless, the commission said that, for security reasons, it had not had access to all the places it wanted to visit.

17. It is true that the Special Rapporteur was unable to visit the Democratic Republic of the Congo, when that would have helped him to gain a more accurate idea of the situation and, above all, to discuss the issues covered in this report with the State authorities. As a result, their comments are not recorded. In any case, the Democratic Republic of the Congo is not the first State under investigation pursuant to the procedure established by Economic and Social Council resolution 1235 (XLII) of 6 June 1967 to refuse to cooperate with a Commission mechanism. Chile did so repeatedly during the dictatorship of General Pinochet, and many other Governments take the same attitude. This does not prevent special rapporteurs' reports from reflecting the situation in the countries in question, since those performing such mandates have demonstrated their objectivity and attachment to the truth.

18. The Special Rapporteur reiterates the concern expressed in his 2 April 1997 report: there is a climate of fear about giving testimony, even outside the country, that was not evident between 1994 and 1996.[6]

E. The Special Rapporteur and the authorities of the former Zaire and of the Democratic Republic of the Congo

19. After the Special Rapporteur's report,[3] the then rebel forces of AFDL refused to cooperate in any way with him, either as an individual or as a member of the joint mission. The mission was denied access on the grounds that the Special Rapporteur had shown a lack of objectivity and had lied is his report.[7] Subsequently, once they were in power, the AFDL authorities added that the Special Rapporteur was persona non grata and that he would never again set foot on Congolese territory.

20. The refusal to cooperate with the Special Rapporteur extended to not replying to any of the communications and requests for urgent action sent to the Government. In January and February 1997, the Special Rapporteur, either on his own or in conjunction with a thematic rapporteur, sent five communications to the Zairian Government requesting information on or seeking protection for five victims of human rights violations. He also requested information on the participation of foreign mercenaries, both European and African, alongside regular Zairian forces, especially in Kisangani, in preparing a counter-offensive against the rebels (9 February). The then Government of President Mobutu and Prime Minister Kengo wa Dondo only replied to this last communication, claiming "no knowledge" of such mercenaries, but protesting at the Special Rapporteur's lack of concern about the Ugandan, Ethiopian and Eritrean mercenaries who were fighting alongside the rebels.

21. Later, the Special Rapporteur transmitted to the authorities of the Democratic Republic of the Congo eight letters containing 130 reports of human rights violations committed against more than 300 persons. He received no reply, although he did receive two acknowledgements of receipt.

F. International obligations of the Democratic Republic of the Congo

22. In his earlier reports, the Special Rapporteur detailed the international treaties to which Zaire was a party, to which should be added, as of 1996, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Of course, the change in the country's name and political regime in no way alters the fact that the State is a party to those treaties and conventions.

23. In 1996, the Committee on the Elimination of Racial Discrimination considered the third to tenth periodic reports of Zaire, expressing regret at their lack of information, particularly on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination. As a positive aspect, it mentioned the transition towards democracy begun in 1990, but expressed grave concern at the discrimination against the Pygmies (Batwa) and at the fact that the authorities had scarcely intervened to ease the tribal and ethnic conflicts in Shaba and Kivu and to protect the population. The Committee also noted that the laws depriving the Banyarwanda of Zairian nationality were in violation of article 5 (d) (iii) of the Convention.

24. Submission of the third periodic report under the International Covenant on Civil and Political Rights, due in 1989, is behind schedule, as are the final part of the initial report and the subsequent periodic reports to the Committee on Economic, Social and Cultural Rights, due in 1987. Neither Zaire nor the Democratic Republic of the Congo have submitted the reports due under the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

25. The report to the Committee on the Elimination of Discrimination against Women which was due in 1992 has not, despite three reminders, been submitted. However, the Committee did receive an oral report from a representative of Zaire on 16 January 1997.

26. When the conflict broke out in 1996, the four Geneva Conventions of 1949 were in force in Zaire, but not the 1977 Additional Protocols.

27. It is especially important to note that the Democratic Republic of the Congo is a party to the 1951 Convention on the Status of Refugees.

G. Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo

28. The office of the United Nations High Commissioner for Human Rights, proposed in the Special Rapporteur's first report[8] and set up in the then Zaire on 10 December 1996, is responsible for monitoring the human rights situation, reporting to the High Commissioner for Human Rights and to the Special Rapporteur, cooperating with the authorities in the implementation of the relevant international norms, helping to train non-governmental organizations and assisting the Special Rapporteur. The office had only one staff member in 1997, and unfortunately the first person appointed resigned four months after taking up his post.

II. THE WAR OF LIBERATION AND INSTITUTIONAL CHANGE

29. The causes of the armed conflict in Kivu were analysed in the Special Rapporteur's report of 28 January 1997.[9] They included the drawing of colonial frontiers without regard for the borders recognized by the 'original' ethnic groups and the nationality problems that this had caused when the country achieved independence; the provocation engaged in by the dictatorship of Mobutu Sésé Séko in depriving of Zairian nationality persons considered to be of Rwandan ethnic origin; the anti-Rwandan feelings fed by the arrival of over 1 million refugees, many of whom had participated in the 1994 genocide in Rwanda, and the attacks by Rwandan Hutu refugees against Zairian Tutsi in Northern Kivu, which had prompted the Tutsi in Southern Kivu to resist any attempt to persecute them and to expel them from the country. Once war broke out, the Banyamulenge Tutsi rebels encountered no resistance from the Zairian armed forces (FAZ); the initial objective of defending themselves against Mobutu's laws and against Hutu refugee attacks was replaced, on 18 October, by that of rebelling against the Kinshasa regime, under the tutelage of AFDL, led by Laurent-Desiré Kabila. Foreign support became increasingly obvious, until

the Rwandan authorities in Kigali finally admitted their involvement in July 1997.

30. The conflict continued in 1997, with rebel attacks against the refugee camps, the only place where resistance was occasionally encountered from the Interahamwe militias; attacks against the civilian population in the cities; the flight, preceded by looting, of demoralized FAZ members, who offered no resistance; and the taking of cities by rebels under the control of AFDL.

31. For its part, the bewildered Government of Zaire, weakened by the illness of the only person capable of taking important decisions, namely, Mobutu, announced counter-offensives. These were ultimately reduced to incursions that were more criminal than military: the incursion in Goma on 8 January and the shelling of civilians rather than military targets in Bukavu and other cities, with the active participation of Serb mercenaries. There was no serious attempt at negotiation while negotiation was still possible and important political and social leaders (Tshisekedi, Olengankoy, Kyungu, Justine Kasa Vubu, Bembe Salaona) and non-governmental organizations were calling for it.

32. While FAZ soldiers fled in search of refuge, even to other countries (especially the United Republic of Tanzania), after having ransacked the cities, Kabila continued to announce his impending arrival in Kinshasa. On 1 March, he seized Kindu, cutting off communication between Kinshasa and Shaba; on 14 March he took Kisangani, despite Prime Minister Kengo's assurances two days earlier that it would not fall. FAZ forces first turned on their Serb mercenary comrades-in-arms, then their Hutu refugee allies, all of whom also fled. AFDL troops were greeted triumphantly. The cities of Nyunzu, Kabalo, Kitenge, Kabongo (with some armed opposition), Kasenga and Kamina followed. Mbuji-Mayi surrendered on 4 April and Lubumbashi, where the Special Presidential Division (DSP) put up resistance, on 9 April. Control of these last cities gave the rebels access to the rich diamond, copper, cobalt and zinc deposits. Occasionally, there was resistance not from FAZ, but from Burundian Hutu militias.

33. The next towns to fall were Kananga, Kolwezi, Tshikapa, Ilebo, Boende, Bumba (Équateur), Kenge (also with some resistance from FAZ, but, in addition to about 100 soldiers, over 200 unarmed civilians died), Kikwit (Badundu) and Lisala (Mobutu's home town). Finally, on 17 May, the capital succumbed without opposition: the Zairian armed forces (FAZ), the mercenaries, the troops of the former Rwandan armed forces (FAR) and the Hutu militia members had all fled. The last-ditch efforts of Prime Minister Likulia, Defence Minister Mahele and DSP Commander Nzimbi to negotiate the surrender of power were in vain. Mobutu fled to his estate in Gbadolite and from there into exile, where he died on 8 September.

34. Throughout the conflict and notwithstanding numerous international efforts to end it,[10] the attitude of the parties foreshadowed the outcome. On the rebels side, there was one party line, one strategy, one leadership, high combat morale and clear goals; in response to appeals from various international forums, there was one position: confidence in the foreign military support that made the rebels' cause its own. On the Kinshasa Government's side, all was improvisation, corruption,[11] demoralization and policy changes. Between January

and May, there were two prime ministers with no popular support (Kengo and Likulia) and one with no political backing (Tshisekedi), and four cabinets. The all-powerful dictator was incapable of governing. Not even General Mahele, the highly respected Minister of Defence, was able to impose his moral authority on a corrupt army.[12]

35. In a country worn down by years of abuse and human rights violations, the rebel troops (whose ranks undeniably included Rwandan soldiers) were greeted everywhere as liberators. One eyewitness said that even in Gbadolite, Mobutu's home town, his enormous house was ransacked by the population.

III. HUMAN RIGHTS AND DEMOCRACY

36. In all his reports, the Special Rapporteur has maintained his belief in the existence of a human right to democracy. Civil and political rights can be enjoyed only in a democratic system, and democracy is the surest path to the achievement of economic, social and cultural rights. The exercise or infringement of this right cannot be overlooked in a report of this nature, particularly since the Commission on Human Rights, in paragraphs 1 (d), 2 (g) and 3 (g) and (h) of its resolution 1997/58, attaches, and rightly so, great importance to the democratic process.

A. The demise of an authoritarian regime

37. The final months of the long Mobutu era were chaotic. The autocrat was barred by ill health from governing, the Kengo Government had fallen into disrepute, the people were bewildered and disillusioned and the political class was discredited.[13] The Catholic bishops stated on 4 January that, in order to hold on to power, members of the transitional institutions were resorting to demagogic manoeuvres, such as lies, deception and corruption, and refusing to bow to popular sovereignty. This is shown by the power-sharing agreement concluded in March by a Committee of 66 composed of numerous parties, with the exception of the Union pour la démocratie et le progrès social (UDPS), the Parti lumumbiste unifié (PALU) and the National Front.

38. The changes of government and currency reflected the prevailing anarchy. With regard to the former, after the fall of Kisangani and in response to persistent rumours of an impending coup d'état, the Supreme Council of the Republic - Transitional Parliament (HCR-PT) dismissed Kengo, who had predicted that the city would not be taken by the rebels. His successor, Etienne Tshisekedi, repealed the Transitional Constitution, offered six ministries to AFDL (which Kabila scornfully declined) and dissolved HCR-PT, earning the condemnation of the rest of the political class. No sooner had he assumed office than Mobutu, availing himself of recently declared state of emergency, dismissed him. General Likulia Bolongo was appointed to succeed him.

39. Twice during the year, the Government issued new bank notes, and this only served to further discredit it. In January, people called the notes "prostates", "mimi oranges" and "death notes"; in May, "ouqueniques". No one accepted them.

40. The electoral process, delayed by manoeuvrings of Mobutu's supporters and a lack of real commitment on the part of the political class (see the three annual reports), was dealt a death blow on 28 January, when Prime Minister Kengo wa Dondo informed HCR-PT that, because of financial problems, neither a constitutional referendum nor elections would be held.

41. The Zairian people, however, were unenthusiastic about their political class, not about the idea of democracy. During the National Sovereign Conference (CNS), they had demonstrated their longing to be free and to fight for freedom and had paid for that longing with much spilt blood. Public support for AFDL can be traced to what Kabila said when he launched his drive for power, namely, that his struggle was motivated by the Government's failure to observe the CNS agreements.

42. There is no question that since 24 April 1990 the Zairian people had obtained some limited but important rights, such as the right to form political parties and non-governmental organizations and to have access, albeit under severe constraints, to the print media.

B. The installation of a new regime: authority in the so-called "liberated" territories

43. At the beginning of the war, the Alliance's political project was unclear. Its messages were contradictory; some appeared to be liberal (democracy, separation of powers and a market economy), while others were reminiscent of Marxist practices (re-educating the masses, class struggle, courses in ideology as a prerequisite for public office and demonstrations of support organized by the Government, such as the one held on 30 August against United Nations interference with regard to human rights violations).

44. In the early months, the daily newspaper Congo Libre announced that AFDL would not be a state party like the Mouvement populaire de la révolution (MPR). As they advanced, however, the rebels announced that, following liberation, AFDL and "true opponents" - meaning those who joined the Alliance - would govern. Local leaders who had headed the peaceful resistance to the routed regime were systematically outlawed.

45. The taking of the cities was followed by changes in their political and military authorities, although, as a rule, junior government officials, were not affected. They were, however, required to take political indoctrination courses and then to join the Tshembe-Tshembe, or Committees for the Defence of the Revolution, a self-defence militia reminiscent of the hated MPR Action Corps for the Defence of the Republic (CADER) of the darkest days of Mobutu's reign.

46. The replacement of traditional chiefs by Tutsi in Kivu and the areas bordering on Rwanda was particularly significant and caused indignation among the so-called "indigenous" ethnic groups, such as the Batembo and Batiri. Some of the replacements were carried out in a humiliating manner, as in Ziralo, a district of Bukavu, where Tutsi soldiers forced the traditional chiefs to carry their baggage.

47. AFDL pronouncements, the only ones to be heard, focused on the progress of the war, the rebuilding of the country and encomiums to the rebel leaders.

48. Some leaders of grass-roots organizations were elected by a show of hands in the presence of the authorities, in a dubious display of democracy.

49. There was no respect for freedom of expression, opinion, association or assembly during the war. Political parties, except for AFDL, continued to be banned and the activities of non-governmental organizations were severely restricted.

50. Some foreign Powers granted de facto recognition to the new rulers before their final triumph; on 17 April, the as-yet rebel forces, exercising the powers of a sovereign State, signed contracts for the mining of copper, zinc and cobalt ores with private United States companies.

C. The new power structure

51. On the day that Kinshasa fell to the rebels, Kabila announced in Lubumbashi that he was assuming the office of the President of the Republic, citing as statutory authority the AFDL charter of October 1996. This document had the force of a constitutional text until 28 May.

52. On 28 May, Decree-Law No. 3 of 1997[14] was promulgated and entered into force on that same day (article XV). Under its article XIV, all previous constitutional, legal and regulatory provisions were repealed, whether or not they conflicted with it. The CNS agreements and the Transitional Constitution of 9 April 1994 were thus consigned to oblivion.

53. The Special Rapporteur cannot but describe this constitutional text as being in the traditional authoritarian mould. Article I is abundantly clear on this score: the organization and exercise of power are in the hands of the Head of State. Such a provision is the exact opposite of what the Special Rapporteur had proposed in previous reports with regard to Marshal Mobutu, namely, that without limits on his powers, there could be neither democracy nor respect for human rights.[15]

Executive branch

54. The text provides that the institutions of the Republic are the President, the Government and the courts. No provision is made for a legislative body, even as a formality. The President of the Republic is the Head of State (art. IV), but there is no mention of how he is elected, by whom or for how long. There is no mention of a body that would carry out the functions of government, although this would appear to be the Council of Ministers, whose meetings are presided over by the Head of State.

Legislative branch

55. Legislative authority is vested in the Head of State, who exercises it through decree-laws discussed in the Council of Ministers; ministers are

appointed and dismissed by the Head of State, to whom they are accountable (articles V, VI and X).

Judicial branch

56. While the text proclaims the independence of judges and magistrates and the Public Prosecutor's Office, the President of the Republic can relieve them of their functions and where appropriate, dismiss them on the proposal of the Supreme Council of the Judiciary.

57. Political subordination to the regime can be seen in the functioning of the judiciary. There is absolute impunity with regard to all the cases of human rights violations mentioned in this report, and only opponents of the regime are brought to the court. Journalists are frequently summonsed for writing articles critical of the regime or demanding greater freedom. The confiscation of property acquired illegally by senior officials of the deposed regime does not mean that such property is returned to the State; it is simply appropriated by the confiscating authorities.

58. In practice, the judicial branch is functioning only in Kinshasa and one or two other major cities. This means that three quarters of the population have no access to the judicial system.

Human rights guarantees

59. With the repeal of previous constitutional texts, the only constitutional protection for human rights and freedoms is that found in article II, which amounts more to a limitation than to a guarantee: the exercise of individual and collective rights and freedoms is guaranteed subject to respect for the law, public order and public morality.

Armed forces

60. The chief of the armed forces is the President of the Republic, who has authority over them in accordance with articles V and VIII of the Decree-Law quoted above.

61. The former Zairian armed forces (FAZ) disappeared once they were defeated or, more precise before they were defeated, since they fled the fighting and turned their attention to looting their compatriots. Only the Special Presidential Division (DSP) offered any resistance in Lubumbashi and other cities. It kept up its resistance to the end.

62. Some members of the former FAZ were chosen to join the victorious army and sent to concentration camps for re-education or "retraining". Such programmes are being carried out in Kitona (Bas-Congo), Kamina (Katanga) and Kota-Koli (Equateur) and, at least in the first case, there have been reliable reports that the soldiers are beaten, lack medical care and have a very high mortality rate (7 to 12 deaths a day, it is claimed).

63. In addition to AFDL soldiers and re-educated members of the former FAZ, there are former Katangan gendarmes,[16] former Mai Mai combatants, mercenaries from neighbouring countries and a few members of the former FAZ.

64. In the military structure of the current army there is an enormous preponderance not just of Tutsi but of Rwandan-born Tutsi. Indeed, it is in the new armed forces that transboundary nationality is most notable.

65. The commander of the army, Anselme Masasu Ningaba, is a Congolese Tutsi; he is not a career soldier, but the leader of one of the four parties in AFDL. The real chief, however, is generally considered to be Colonel James Kabare, G3 of the Rwandan Patriotic Army and a Rwandan national.

66. Transboundary Tutsi nationality allows the police and the armed forces to operate in joint units or commands in both the Democratic Republic of the Congo and Rwanda. Thus, Colonel César Kayizari is said to hold authority not only in Bukavu (Southern Kivu) but also in Gikongoro and Cyangungu, both Rwandan cities. According to other sources, they simply conduct joint missions, patrols or actions. The same system is said to apply between Goma and Gisenyi. The most serious aspect of all this, however, is that it ensures impunity for human rights abuses. Those responsible are simply transferred to the other country. Moreover, it is accepted that each group pursues its own interests (the Alliance deals with the Hutu, former FAZ with the Mai Mai, the Katangans with the people of Kinshasa, etc.), with the inevitable result that human rights are not protected.

67. Notwithstanding, some differences have arisen among the various groups of soldiers: between AFDL and former FAZ soldiers and among Rwandans, Katangans and Kasaians. Moreover, in June further differences arose because the Tutsi were being paid US$ 100 in dollars, while the others were being paid the equivalent of US$ 20 in new zaires.

68. All new soldiers will have to attend courses in military and ideological indoctrination, and 40,000 young soldiers were recently recruited.

Role of the Alliance des forces democratiques pour la libération du Congo-Zaïre (AFDL)

69. The real power in the country rests with AFDL, as indeed President Kabila stated in announcing his assumption of power, on 17 May. It is, of course, the only authorized party. Other parties may join it but may not act individually. Non-AFDL ministers act in their personal capacity.

70. The Deputy Secretary-General of AFDL, Gaëtan Kakudji, stated on 3 July that the Secretary-General of AFDL, followed by his Deputy, ranked in order of seniority after the President. In practice, in Kabila's absence the Council of Ministers is presided over by AFDL Secretary Deogratia Bugera. Some decisions of the civil authorities are voided by AFDL. Every independent minister has an AFDL adviser, who is seen as the real authority; this has led the public to believe that AFDL is moving steadily closer to what the Mouvement populaire de la révolution used to be.

71. The Alliance is dominated by members of the Tutsi ethnic group, including the Banyamulenge, and by people who lived in exile in the United States, Belgium and South Africa during the dictatorship (the "diaspora").

Role of the traditional opposition to the Mobutu regime

72. The peaceful opposition to Mobutu is frustrated at being marginalized. The Union pour la démocratie et le progrès social (UDPS) has complained about this from the start. On 14 June, it criticized the Government for having moved away completely from the CNS agreements; on 17 June, the Parti lumumbiste unifié (PALU) demanded that the Government reduce the transition period to 12 months; the Christian Democrats called for the formation of a Front pour la survie de la démocratie (FSD); and on 24 June, Joseph Olenghankoy, leader of the Forces novatrices pour l'union et la solidarité (FONUS), criticized the anti-democratic course taken by AFDL (24 June). The Catholic bishops expressed regret that war had been the means used to end the dictatorship and above all, that the political programme approved by CNS was not being followed and that the new authorities did not respect human dignity (2 July). The general public also expressed their views in public demonstrations demanding genuine democracy and the departure of the Rwandans in the Government, such as those organized by UDPS on 20 and 30 June, 25 July and 15 August and by PALU on 25 July.

73. All political activity and demonstrations were banned by decision of 26 May of the Deputy Minister of the Interior, Faustin Munene. Analysts believe that this course of action was motivated not only by fear of hearing people's views, but also by the aim, in which the Mobutu dictatorship was successful at least until 1990, of outlawing all dissent, preventing the emergence of opposition leaders and obstructing, by means of repression, any attempt at organization. The ban on parties is by no means temporary: the powerful Secretary-General of AFDL announced on 1 June that it would last "for two years, in the interests of effectiveness", and on 28 August the Minister of the Interior, Mwenze Kongolo, extended it sine die, as well as banning the use and display of banners, placards, etc., with a warning that those who flouted the ban would be severely punished.

D. Transboundary nationality

74. The Special Rapporteur mentioned in his reports[17] the extremely serious problem of the nationality of the Kinyarwanda-speaking inhabitants of the then Zaire, who had been made stateless by a 1981 law. Many of those who criticized the Special Rapporteur for his remarks now accept that the nationality issue cannot be left unresolved.

75. Unfortunately, a de facto solution has emerged that runs counter to the principles and norms of international law: simply belonging to an ethnic group in practice confers nationality in all the countries where that group holds political power.

76. This phenomenon arose before the war, when Banyamulenge Zairian Tutsi who had supported the Rwandan Patriotic Front were given important posts in Rwanda, despite calling themselves Zairians.[18]

77. There are people in power now who only a few years ago fled to South Africa as Rwandan citizens, who studied in Zaire as Rwandan citizens or who keep their Rwandan families in Rwanda without taking Congolese nationality.

78. This preponderance of Tutsi is seen by the Congolese, who always viewed them as foreigners, as an affront to national honour.

E. Promises of a new democratic order and the reality

79. From its first resolution on Zaire (resolution 1994/87) to its latest (resolution 1997/58), the Commission on Human Rights has been concerned about the progress or otherwise of the process of transition to a democratic regime. In its latest resolution, the Commission welcomed the preparations for elections, including the establishment of the National Electoral Commission and of the Standing Interministerial Commission to ensure contacts between the Government and the National Electoral Commission and welcomed the decision to hold a constitutional referendum. However, it expressed its concern at the delay in the process, which had been aggravated by the war in eastern Zaire. It recalled the CNS agreements and urged that preparations for elections should continue.

80. Unfortunately, the change of Government after the war, far from making progress, has in this respect been a major setback, although it is true that, under the Mobutu-Kengo Government, progress was inadequate and slow and above all, the process seemed for the political class to be a sop to the international community rather than a real commitment to the State's obligation to ensure that its citizens live, and enjoy the human right to live, in a democracy.[19]

81. On 19 May, the AFDL Secretary-General announced that a constituent assembly would be convened in 60 days. On 29 May, however, President Kabila sent a different message when he presented an electoral timetable that was to culminate in 24 months with the first legislative and presidential elections. The proposed timetable was due to begin in 1997 with four activities requiring neither massive funding nor international assistance, only the will to carry them out and a real commitment to democracy.

82. None of this materialized. On 30 June, Independence Day, there was no announcement of the establishment of a Constitutional Commission (as opposed to the Constituent Assembly promised by Deogratia Bugera), nor was there any announcement in July as to who would chair it or in August as to who would be its members, and it was not solemnly installed on 1 September. It is therefore impossible that the non-existent Commission will submit its report or that anything will be done within the original time-frame (April 1998, convening of elections for deputies to the Constituent Assembly; June, election of the Assembly; 30 June, installation of the Assembly; October, report by the Assembly to the President; December, possible referendum on the Constitution; April 1999, legislative and presidential elections).

83. It therefore came as no surprise when on 13 July, Foreign Minister Bizima Karaha stated in Washington that the pledge made by Kabila was simply a

target and that it would not be possible to hold elections until the electorate had been educated and provocateurs had been imprisoned or exiled.

84. The Foreign Minister's remarks notwithstanding, the President announced on 5 August, when European cooperation was resumed, that elections would be held as planned in 1999.[20] Three days later, however, he said that the April 1999 elections might be deferred if the international community did not help the Democratic Republic of the Congo to repair the country's infrastructure. In any case, the Special Rapporteur has been informed that there are no teams preparing either the elections or the necessary groundwork for holding them.

IV. CURRENT ARMED CONFLICTS

85. In addition to the conflicts arising out of the aftermath of the war and the change of Government, there are still other armed conflicts, some of them on the wane, others in full swing, and yet others in preparation.

A. Continuing war in Northern Kivu

86. The guerrilla groups trained in the Hutu refugee camps are still active. According to the information received, some former members of the Rwandan armed forces and Interahamwe militants are still hiding out in Virunga Park. They apparently leave the forest to pursue AFDL soldiers although the victims are often Congolese civilians and Rwandan and Congolese Tutsi. There is no exact estimate of the number of incidents, but one such incident claimed the lives of eight AFDL soldiers on 23 April (report of the commission chaired by Bishop Kasukuti Ngoy). A further three clashes took place in May on the road between Bukavu and Uvira and others at the Sake crossroads in Masisi and on the road between Goma and Rutshuru. All sources claim that considerable environmental damage was caused.

87. Alliance soldiers, meanwhile, acting with Congolese Tutsi who returned heavily armed to Northern Kivu after the fleeing to Rwanda in 1996[21] clashed with Interahamwe, former FAZ members and Mai Mai in an attempt to recover property and sought to replace the traditional chiefs (see para. 46 above). The so-called "original" inhabitants, especially the Mai-Mai, reacted violently and, together with Interahamwe and members of the former Rwandan armed forces, attacked Tutsi soldiers in Minova, Makelele, Nyabibwa, Ngungu, Nyanbombo, Katale and elsewhere. Many towns and villages (Masisi, Bulwa, Minfi, Birere, Mutiri and others) were burned down and, as usual, many of the victims were civilians.

88. These incidents occurred in July and August, long after the Alliance had taken power; it must therefore be held responsible for the acts of its subordinates. AFDL, with the support of the Rwandan Patriotic Army, took a direct part in the conflict, using three helicopters to destroy, among other cities, Masisi, where the hospital was burned down and the patients murdered.

89. According to reports from humanitarian agencies, these incidents left some 2,000 people dead. Thousands of people, both Hutu and Tutsi, fled the cities,

and the Government, having sided with one of the factions, was unable to put an end to the situation.

B. Activities of the Conseil de la résistance et de la libération de Kivu

90. Former senior officials of the Mobutu regime, such as former First Vice-President of the Supreme Council of the Republic - Transitional Parliament (HCR-PT) Anzuluni Bembe, former Prime Minister Faustin Birindwa, former Minister Pay Pay and others, most of them of the Bembe ethnic group, with the help of other people such as Charles Nsimba, a former comrade of Kabila have formed in the United Republic of Tanzania a Conseil de la résistance et de la libération de Kivu. Militants of this group are said to have carried out several attacks on the region, although the Special Rapporteur has been unable to confirm this.

C. Calls to resistance by generals of the former Zairian armed forces

91. Although, to date, no major incidents have been reported, a dangerous call to resistance has gone out from former generals Eluki Mongo Aundu, former chief of the FAZ General Staff, Baramoto Kpama, former Commander of the Civil Guard and Ilunga Shamamba, former Minister of the Interior, who are said to be recruiting former soldiers of the defeated FAZ and mercenaries. This movement was supported by Mobutu from exile.

D. Violence against Cabindan leaders in Bas-Congo

92. It has also been reported that in Bas-Congo Alliance soldiers are attacking, torturing and killing Cabindans exiled there. The perpetrators look like Alliance soldiers but, curiously, speak Portuguese, which seems to suggest that what is really an Angolan conflict has been imported into the Democratic Republic of the Congo. One such incident occurred in Kimblanga, where a number of people were killed.

V. SITUATION IN THE REFUGEE CAMPS

93. Previous reports considered the situation of the Rwandan refugee camps in Zaire, the security measures adopted, the Mobutu-Kengo Government's failure to separate and isolate those responsible for genocide or intimidation from the rest of the refugees, etc. Altogether, Zaire was the unwilling victim of a tragedy that occurred in another country.[22] The consequences of the war were considered in those reports[23] and in the report of the joint mission (A/51/942, section IV): rebel attacks backed by foreign armed forces, so-called voluntary repatriation with the assistance of UNHCR and the disappearance, by May 1997, of some 140,000 refugees. The attacks on the camps and the blockading of humanitarian assistance were mentioned as methods of extermination.

94. Humanitarian assistance to refugees in the camps, although not completely blocked, encountered serious difficulties, such as denial of access for several days, restriction to certain times of day and similar difficulties.

95. In July, the Government decided to send AFDL military contingents to the Shabunda camps in Southern Kivu to protect and monitor the repatriation of refugees; this action led the Special Rapporteur who is submitting this report and the Special Rapporteur on extrajudicial, summary or arbitrary executions to ask the United Nations High Commissioner for Refugees for her views on the subject. The Office of the High Commissioner notified the rapporteurs about the preventive steps that had been taken, which ultimately proved to be effective.

96. On 31 August, following the repatriation of some 685,000 persons to Rwanda in late 1996 and another 184,000 in 1997 (making a total of 869,000), only 874 persons remained in the refugee camps in the Democratic Republic of the Congo, with another 24,000 remaining outside the camps. However, the fate of some 190,000 refugees was still unknown.

Violation of the basic principle of non-refoulement

97. The Mobutu Government, in general, respected the principle of non-refoulement, the cornerstone of the international refugee protection system. The number of violations decreased between 27 November 1994 and 19 August 1995, despite the enormous pressure from Zairian society to expel all the Rwandans and the threats to close the camps.

98. The same was not true in the territories under the authority of AFDL. The attacks on the camps, the blockading of humanitarian assistance, the forcing of the refugees into the forests and the deceit used to lure them out by promising them food and then massacring them - all these and other actions are not only a violation of the obligation to protect the human rights of refugees but have also generated overwhelming pressure in favour of forcible repatriation.

99. Cases of refoulement in its traditional sense have also occurred. On the night of 3 to 4 September, with no advance warning, soldiers from the Alliance, which had announced its intention to expel the refugees, entered the Kisangani refugee transport facility, removed some 440 Rwandan refugees and 325 Burundian refugees, including 252 women and 242 children, and flew them to Kigali in three flights. Four days later, UNHCR was still unable to make contact with them. The High Commissioner lodged a strong protest against this outrage.

Internally displaced persons

100. The situation of internally displaced persons as a result of the influx of Rwandan refugees, the ethnic conflict in Northern Kivu and the liberation struggle, has been outlined in the reports of the Special Rapporteur[24] and the joint mission (A/51/942). The ending of the war of liberation did not solve the problem, although some Tutsi displaced from Northern Kivu were able to return to their homes. However, the renewal of conflict in that region has caused further displacements, which will be discussed in the final report to the Commission on Human Rights.

VI. HUMAN RIGHTS UNDER THE REGIME OF MARSHAL MOBUTU

101. The picture of human rights violations presented by the Special Rapporteur in his earlier reports did not change in the areas controlled by Marshal Mobutu's regime until 17 May. There was a general atmosphere of insecurity, in which the population suffered from the arbitrariness and brazen arrogance of the Zairian armed forces; an inefficient judiciary; severe repression of freedom of expression and opinion, although within the margin of freedom tolerated since the National Sovereign Conference; systematic torture and deplorable prison conditions; and the absence of measures to ensure economic, social and cultural rights. Two new forms of abuse appeared: dissidents were accused of acting in complicity with the foreign aggressor and of opposing the new banknotes. The mere mention of Kabila's name was cause for reprisals, and it became extremely risky to possess photographs of Gisenga or Lumumba. The traditional oppressors - the army and the police - were joined by Serb mercenaries hired by the regime. Some newspapers incited racial hatred, especially against the Baluba, the ethnic group to which Tshisekedi and Kabila belong. The situation of non-governmental organizations was extremely difficult.

102. As they fled from the rebels, the soldiers looted and committed all kinds of atrocities, with the result that the rebels were received as genuine liberators.

A. Right to life

Death penalty

103. As in previous years, death sentences were handed down; even worse, this time the sentences were pronounced by wartime military tribunals, with no respect whatsoever for due process of law. The Special Rapporteur learned of the cases of (a) Dr. Joseph Kanku Pinganay, accused of spying; (b) 14 soldiers of various ranks accused of cowardice; and (c) one official accused of robbery. However, as in previous years, these sentences were not carried out. Some of the prisoners were transferred to Kinshasa, from where they escaped when the rebels arrived.

Political murders

104. The most dramatic case of political murder was the assassination of Generals Mahele Lioko Bokungu and Busembo, together with the former's bodyguard, Kasemba, who were accused of being traitors and were killed by members of the Special Presidential Division when Kinshasa fell. There were others, however, especially during the fall of the capital, when there was an all-out hunt for Tutsi.

Arbitrary deprivation of life through abuse of power shielded by impunity

105. The acts attributed to Serb mercenary Dominique Yugo are especially serious. He is accused not only of crimes related to the war for which he was hired, but also of ordinary offences. According to reliable reports received by

the group Justice et libération, Yugo personally executed some 120 people between 2 and 15 March.

106. There were reports that the Zairian armed forces, in their flight, committed acts of looting that resulted in death, such as that of Dr. Bongo on 3 January in Goma.

B. Right to physical and psychological integrity

107. Systematic torture under the Mobutu regime showed no change from previous years. Complaints of torture were received from Christophe Mpiana Kadjanda, a trade union leader detained on 21 February for proposing negotiations with the Alliance, and from Bayato, in Kisangani, who was detained and tortured for 48 hours for talking about the rebellion.

C. Right to security of person

108. Reports agree that the only motivation of the Zairian armed forces in relocating to Equateur seems to have been to take as much as possible with them. Witnesses say: "The soldiers attacked me in Limite on 23 February and stole NZ 9,700,000"; "the soldiers in Ndolo attacked the offices of the Association zaïroise pour la défense des droits de l'homme (AZADHO) and stole NZ 1,600,000"; "the soldiers attacked Mandongi's house in Kisangani and stole NZ 2,500,000"; and "they looted the factory in Isiro, leaving thousands without jobs". It is impossible to list here the hundreds of other cases reported.

109. The security of José Olengankoy, a political leader (who had already been arrested in November 1996), Bembe Salaona, a businessman, and Aziz Kundili and Sanga Bongaga, political leaders, was also threatened by arbitrary acts of the authorities for criticizing the banknotes issued in January.

110. The right to security was also violated by incitement to ethnic hatred. In April in the capital, the Bangala (Mobutu's tribe) attacked the Baluba, who counter-attacked. The Bangala later attacked the Tutsi, killing a number of them.

D. Right to liberty of person

111. In the last days of the deposed Government, there were many arbitrary arrests. The accusation of being a supporter of the Alliance was one of the most frequent reasons, as shown by the arrest in January of four youths from the so-called "original" Union de fédéralistes indépendants (UFERI) accused of being collaborators; in addition, Colonel Prosper Nabyolwa Muganguzi, who was accused of being a traitor, was arrested by the Action and Military Information Service (SARM) on 12 December and remained a prisoner in January.

112. Besides these cases, there are others mentioned under the sections covering freedom of expression, assembly and association, among others, and cases of torture of detainees.

E. Right to freedom of opinion

113. On 14 February, all political programmes on radio and television were prohibited, while in April foreign correspondents were required to renew their credentials on the pretext of combating disinformation.

114. The freedom of many journalists was curtailed. The cases reported include: (a) the editor of Le Palmarès, Michel Ladi Luya (4 to 24 January, for writing about Mobutu's illness); (b) a Swiss correspondent for Libération (expelled from the country on 23 February); (c) the correspondents for Le Monde and Radio France Internationale, who later suffered the same fate; (d) Emmanuel Kabongo Malu, of Le Potentiel, who was interrogated by SARM for more than five hours because of articles in that newspaper (7 February); (e) José Feruzi of L'Ouragan and Kasongo Mukishi of Le Bâtisseur, who were detained between 1 March and 1 April by the police; (f) journalists from the Associated Press, who were arrested and beaten on 9 April for covering a political meeting; (g) journalist Sapu Kasadi, who was attacked with a bayonet on the same occasion; (h) the wife and children of exiled journalist Benjamin Sham Lapong, because of an article he wrote for La Tempête des Tropiques in January.

F. Right to freedom of association

115. Non-governmental organizations, specifically human rights groups, found themselves in a particularly difficult situation. The following were affected, among others: (a) the President of AZADHO, Guillaume Ngefa, who was summoned to appear before the Government for criticizing the new banknotes; (b) Clément Citeya, of Justice et libération; and (c) Dismas Kitenge, of Groupe Lotus in Kisangani, who were interrogated by the National Intelligence and Protection Service (SNIP) for receiving faxes from abroad.

G. Right to freedom of assembly

116. On 14 February, apparently in response to a successful "ville morte" protest called by FONUS, Olengankoy's group, on 10 February, the Government banned all public demonstrations in Kinshasa; this did not prevent some from being held, but they were harshly suppressed: (a) on 7 March, the leaders of UDPS were arrested while participating in a demonstration; (b) another demonstration was violently put down on 9 April when UDPS accompanied Tshisekedi, who had been removed from office by Mobutu, in his march on the Prime Minister's offices; and (c) the same occurred on 14 April.

H. Economic, social and cultural rights

117. In this section, the Special Rapporteur refers back to the conditions described in his previous reports, particularly to the absence of measures designed to gradually ensure respect for these rights, the negative influence of the deteriorating economy, the very high inflation rate (741 per cent in 1996, a

rate that continued into the early months of 1997) and the low rate of investment in health, education and housing.

118. The conflict exacerbated the lack of protection: a cholera epidemic, which was attributed to soldiers and civilians fleeing from the east, struck Kinshasa in April, and the State made no effort to help the afflicted.

119. In addition, final examinations for secondary school students were held on schedule in only three of the country's 11 regions (Bandundu, Bas-Zaire and Equateur). In Kinshasa, they were postponed because many parents were unable to raise the equivalent of US$ 10 required to take them.

I. Situation of children

120. Here, again, the Special Rapporteur refers back to his earlier reports. Since 1994, he has been expressing concern because the extreme poverty in the country primarily affects children, a situation that is aggravated by the complete absence of the State in terms of providing for education - which is mostly in the hands of parents - and health. His 1996 report[25] expressed concern at the recruitment of children by FAZ, although this extremely serious practice seems to have been more rare than in the case of AFDL.

J. Situation of women

121. Commission on Human Rights resolution 1997/58 requests the Special Rapporteur to continue to apply a gender perspective to a greater extent in drawing up his reports, including in the collection of information and in recommendations. The Special Rapporteur had expressed concern at the situation of women in his reports[26] but had also included violations of women's human rights in the sections devoted to each specific right. Owing to the lack of progress in this area, the more recent reports have referred back to earlier reports, noting any changes that may have occurred.

122. Unfortunately, the Special Rapporteur received no reports, either from the Government or from non-governmental organizations, on changes in the situation of women in the areas under the control of the deposed Government. However, during his visit to Goma in March, he heard testimony from Zairian women who felt that their situation had worsened because of the armed conflict; shortages of basic necessities were even greater this year.

123. Torture continued to be used on women, and once again cases of rape by members of the Zairian armed forces were reported; however, the only cases where more concrete data are available are those of Okako Djelo and Ikeha Onahindo, on 5 January in Kindu. An 11-year-old girl, Bebe Temate, was also raped in Kindu 48 hours later.

124. On 16 January, the Committee on the Elimination of Discrimination against Women (CEDAW) considered an oral report, submitted on an exceptional basis, by the representative of Zaire. The Special Rapporteur was surprised at some aspects of the report, which differed substantially from his own reports. For

example, according to the oral report, after independence "the political will to ensure women's societal and public participation was also apparent"; "only 14 per cent of girls [are] not at school or attending functional literacy programmes", and so on. The truth, in the Special Rapporteur's view, is that while steps have been taken to ensure women's participation, they have been taken primarily by civil society, not by the State; as for school enrolment, the results, as set forth in earlier reports, leave much to be desired. The Committee noted a number of subjects of concern with regard to the situation of women.[27]

VII. HUMAN RIGHTS IN THE LIBERATED AREAS AND UNDER THE GOVERNMENT OF PRESIDENT KABILA

125. The following general description provides an insight into the human rights situation in the Democratic Republic of the Congo, both during the war and after the AFDL victory:

(a) The regime is one in which all power is in the hands of one person (see articles I, II, III, IV, V, VI, VIII, IX and XII of Decree-Law No. 97-3 and paras. 51 to 58 above);

(b) A climate of terror prevails throughout the country because of the way in which the Alliance won its victory, the fate met by the Rwandan refugees in the camps and the settling of 32-year-old scores;

(c) The regime is a military regime which has absolute control over the country;

(d) With the sole exception of Kinshasa, where newspapers are in circulation, the country is in a state of complete disinformation: there are no newspapers, radio stations are controlled by AFDL, there is no postal service and the telephone service is not working;

(e) There is terrible stigmatization: to be accused of genocide or of being, inter alia, a Mobutu supporter, an Interahamwe Hutu or a Bembe can be sufficient grounds for being killed, looted, stripped of one's property, arbitrarily detained, tortured or exiled.

126. All of the foregoing has created a climate of violence, insecurity, disinformation and lack of participation, as the incidents described below demonstrate.

127. Incidents which the Special Rapporteur mentions in his report[28] as not being the war per se, such as summary executions, enforced disappearances, torture, violations of freedom of expression and violations of the right to property, should, where they occurred in 1997, be understood to be covered by this report.

A. Right to life

Death penalty

128. No information was obtained on its application, and it is not known what the new authorities' position on this matter will be.

Political murders

129. According to various reports which are credible but which the Special Rapporteur was unable to confirm, André Kisase Ngandu, a Zairian who was a veteran of the Lumumba era and highly respected in the former Zaire and who had, from the outset, been the AFDL second-in-command, was assassinated by Alliance forces on 8 January 1997. The incident is attributed to a Rwandan soldier accused of numerous acts of violence both in his own country and in the Democratic Republic of the Congo. Two other very serious cases are the alleged murders of two Katangan gendarmes, part of a group of 13 people who were detained on arriving in Lubumbashi for an interview with President Kabila and General Muland.

130. Under the heading of "settling of scores", the following political murders were reported: (a) on 15 May, an AFDL soldier killed a Hutu refugee, whom he suspected of having killed his family, in Mbandaka; (b) on 15 May, Bahoya Likong, recruited by AFDL, was murdered for disloyalty; (c) on 17 May, victorious troops killed the police chief of the Kisangani Terminus district in Kinshasa for allegedly inciting the local population to protest against their abuses; (d) the following day, a member of the Batadulua Venant Civil Guard was murdered when he came to turn in his weapon; (e) in late May, Professor Omotela, a human rights activist in Yabongo, was murdered by AFDL soldiers. The most serious case of mass political murder occurred in Uvira, during the night of 25 to 26 May, and is attributed by many sources to the soldier who allegedly killed André Kisase. Some 10 victims were first detained and then murdered in cold blood, causing public outrage.

Enforced disappearances

131. In addition to the cases mentioned by the Special Rapporteur in his report,[29] many of which occurred in 1997, the most serious case was that of 16 Hutu soldiers hospitalized in Mama Yemo Hospital (now the General Hospital), who were removed by AFDL officers on the day that Kinshasa was taken over and who are still missing. Their last names are: Mugirameza, Musabye, Cymana, Nsengimana, Nkizumwami, Munyangazu, Munyarukiko, Byarugaba, Byarimana, Turatshinze, Kamanzi, Ruziriliramana, Turimimana, Utamuliza, Twagirayezu and Uwayezu. The Government has provided no explanation, despite the international concern expressed about the case.

132. Other cases are those of Matungulau Bareke, chief of the Kibuma group, and his brother Siyapata, who were detained on 26 February and are still missing, their younger brother, detained on 7 April and also missing, and Mbitsemunda Mazanga, detained on 16 April in the eighth military district jail; as of the date of this report, there has been no news of him.

Arbitrary deprivation of life through excessive use of force in repressing crime or dissidence

133. This category includes acts committed by AFDL officials, in the exercise of their duties, in suppressing dissent or ordinary crime, such as: (a) the murder of Masango Nzani for seeking to attend a tribute to the much-loved General Mahele in the church in which his body was laid out, a crime committed after he had been overpowered, humiliated and forced to kneel and beg forgiveness; (b) the murder of seven soldiers of the former Zairian armed forces, who were burned alive for alleged looting on 17 May; (c) the murder of Limbete Lingoli in Yabotumelase for practising witchcraft; (d) the killing of Komisa Kiakumbutu and Muzulu Theo when a peaceful march organized by the Parti lumumbiste unifié (PALU) was suppressed on 25 July; (e) the killing of Alexandre Makolo when a student protest on 27 August in Kinshasa was suppressed; (f) the killing of Martine Npuno Nkuba on 11 August for being in a place reserved for AFDL members in Lubumbashi; (g) the killing of nine persons imprisoned for witchcraft in Kala, Katanga in August; (h) the execution in early August of 20 persons accused of corruption or simply of engaging in political activity; and (i) the killing of Nicole Bute on 20 May on suspicion of stealing a mirror.

134. The absurd and brutal suppression of the popular demonstration expressing outrage over the murders in Uvira on the night of 25 to 26 May (see para. 130) was particularly serious: according to some sources, 38 people, and according to others, 126 people, were killed and hundreds of others, including the new Governor, injured.

Arbitrary deprivation of life through abuse of power shielded by impunity

135. The indiscriminate violence against the stigmatized, the licence given to the Kadogo to take booty and the lack of supervision in detention centres have resulted in many people being killed with impunity by AFDL soldiers: (a) 15 people were killed on 6 July at Ngiri-Ngiri; (b) two money changers, Vata and Botuli, were killed in the Moulaert district of Bandalungwa; (c) a boy, Rene Balika, was killed by a grenade and many other people injured on 13 July; (d) shopkeeper Ewalo Monga was killed on 15 July in Limite, Kinshasa, when he was robbed of NZ 14 million; (e) Mrs. Mbambu Rufunda was killed at Lume on 23 April; (f) a Lebanese merchant was killed on 17 July at Barumbu when he was robbed of US$ 7,000; (g) Justin Lokala was killed on 21 July because he recognized military assailants who had extorted money from him; (h) Thethe Tatia was killed on 23 July by soldiers who raided her house; (i) on 3 April, Clement Mujarwanda and Vincent Chikala, who were being held in a military jail at Ishasha, were killed by guards under the orders of Césaire in order to rob them of US$ 20,000; (j) on 13 June, soldiers killed two people who were drinking beer in Nganda, Northern Kivu; (k) on 6 July, Léandre Hamisi was murdered at Karisimbi in order to rob him of NZ 600,000; (l) Mrs. Wivine was murdered by soldiers at Karisimbi who dragged her from her home on 21 June; (m) on 15 July, AFDL soldiers raided the home of Eugene in Karisimbi with intent to commit a robbery, killing the owner; (n) on 6 July, 15 people were massacred by Alliance soldiers who fired on peaceful citizens (the names of some of those killed are: Aasukiswa, Kivuila Mbuta, Mukendi, Kiwa, Tambwe Binasalima, Bongala Joseph, Sakameso Suamba and Albert and Mabale Amiako, the latter being a member of

AFDL); and (o) Dieudonné Kitengé was publicly shot for having committed adultery.

136. The summary executions carried out when the Alliance took Kinshasa also belong in this category. No one denies that the city fell without a fight. However, according to the local Red Cross, some 318 bodies were picked up between 17 and 21 May, most of them belonging to former members of the Zairian armed forces and ordinary criminals whom AFDL troops had caught looting. According to a report by Voix des sans voix pour les droits de l'homme, some of the bodies had been mutilated.

Death by torture

137. There have been serious, substantiated reports of torture, including torture by applying electric current through a baton or club. The information gathered confirms that torture is used systematically.

138. Cases of torture resulting in death include the following: (a) on 27 May, AFDL soldiers whipped with live electric wires two soldiers of the former Zairian armed forces accused of looting; one of the two soldiers died; (b) a little girl died after being beaten and tortured by soldiers in Kinshasa during the week of 26 May; (c) in April, Sherifwa Mamboko died as a result of torture in the jail set up in the Hotel Kabuis in Masisi; (d) another citizen of Mazinga died in April in an AFDL jail in Kisangani after being hit more than 250 times with a club; (e) in March, a man called Matalo died in Goma in similar circumstances; (f) a Mrs. Mabolo Mukpele, who had been accused of witchcraft, died as a result of torture; (g) on 22 May, a detained former member of the Civil Guard had his legs and hands cut off and was then burned alive; (h) also in May, Bokele wa Foka died in a jail in Isangi as a result of ill-treatment; (i) in June, a man called Bonone also died in Isangi as a result of torture; (j) in July, two detainees, Makundu Elomboakiti and Longala, died under torture; and (k) the report by Bishop Kasukuti Ngoy adds the case of a Bafulira who died under torture when his eyes were gouged out and a stick was pushed up his rectum.

B. Right to physical and psychological integrity

139. Acts of violence of the kind described in the preceding section but not resulting in death were mentioned on numerous occasions in reports to the Special Rapporteur. Many of them are recorded in connection with the violation of other rights.

140. For instance, it was reported that public beatings of AFDL opponents are commonplace, as is the bastonnade, a practice reminiscent of the colonial era.

141. The Special Rapporteur heard accounts such as the following: "they came to my home, stabbed my wife and took my radio and other property"; "when ... was returning home from his field, soldiers hit him and left him unconscious so that they could rob him"; "the boy was forced to show his student identity card and when he did so the soldiers said that boys were those most opposed to giving the Tutsi Congolese nationality, so they hit him and he had to be treated at a

clinic run by nuns"; "they shot the girl because she complained when they tried to take off her jeans and those of two other girls"; "they entered the home of ... and hit his brother with a bayonet, robbing him of US$ 40"; "Mrs. Odette Biela Kanyanga, secretary of the Union nationale des femmes (UNAF), was beaten at La Gombe by members of AFDL who accused her of being the wife of a colonel in the Zairian armed forces; she had to be treated at the Médicis Clinic"; "on 15 June in Karisimbi, they entered the house, stabbed 16-year-old Marie Mungabuli and stole US$ 141"; "when the victims shouted for help, other soldiers entered, not to protect them but to help the soldier who was attacking them, and stabbed the owner of the house"; "on 16 June in Karisimbi, soldiers entered the home of Mrs. ... with intent to commit a robbery, but they shot and wounded the owner of the house in the leg and ... in the head"; "in order to stop the torture, the detainees had to take their torturers to their home, where their brother had to give them US$ 300"; "after attacking Father Quetare, administrator of the seminary of the White Fathers in Goma, they beat him to get him to hand over the key to the safe, which they emptied completely".

Torture and other cruel, inhuman or degrading treatment or punishment

142. Some very common forms of torture and cruel treatment of prisoners, which demonstrate their systematic and widespread nature, were: beatings, urinating in the mouths of prisoners, rape of women, electric shocks and beatings using a plank with nails. Les Amis de Nelson Mandela claim that prisoners at the general staff headquarters receive 60 blows a day in the morning, afternoon and night.

143. Particularly serious cases included cutting off the middle finger of the right hand with a bayonet, on 19 May in Barumbu, of a man imprisoned for smoking marihuana; slashing with a bayonet on 20 May in Kalamu the chest of a youth accused of stealing a tyre; breaking fingers with blows from a gun; breaking Dr. Kambale Matopo's jaw; and administering violent blows to the belly of the former community leader of Mobango Itimbiri, Lukia Koko.

144. Bertrand Lukando, CNONGD President in Maniema and member of the non-governmental human rights organization Haki Za Binadamu, was severely tortured after his arrest on 15 August (accused of being an "enemy of the people"), as was CNONGD Executive Secretary Ramazani Diomba, on the same days, as a result of which he required hospitalization for five days.

145. There was massive use of torture; 47 people in Goma were subjected to it for several days from 26 May onwards.

146. The systematic nature of the torture is revealed by what happened to a youth called Richard Mpiana Kalenga: arrested on 30 June, he was severely tortured but released on condition that he gave the names of opposition students.

147. Cases of torture and cruel treatment of women are mentioned in the relevant section below.

148. The Rapporteur referred to the Government over 40 cases which appeared to be the best documented and most detailed.

C. Right to security of person

149. It was stated in previous reports[30] that the arrival of the then rebels in the cities had signified an improvement in the enjoyment of the human right to security. The Rapid Response Police had contributed to that objective.

150. Nevertheless, that impression has begun to fade, although abuses have not, of course, reached the levels of the previous period, as the actions of many AFDL soldiers go unpunished. Indeed, incidents such as those mentioned in the sections on violations of the rights to life and to physical and psychological integrity and which were unrelated to the fulfilment of professional duties, recall all too easily the looting and extortion carried out by the former FAZ. A mere curfew infringement authorizes the use of violence. The Special Rapporteur was told that people in Kivu who left the house to go to the toilet in an adjoining building (case of Mrs. Mango Mauziko) or who listened to the radio after 8 p.m. (case of Lubingo) received beatings. Over 100 cases contained in complaints and reports telling of sudden arrests or house raids being carried out, in almost every part of the country, on the pretext of looking for weapons or on allegations of protecting FAZ soldiers and that ended in the theft of watches, radios, money, clothing, electrical items, television sets and so on, were forwarded to the Government, which issued no report.

151. However, acts of this kind were also committed for purposes of political intimidation, as illustrated by the following examples: (a) the residence of the former Ambassador of Zaire to Rwanda was raided on 23 May by Alliance soldiers claiming to be searching for weapons; the soldiers took a television set, a computer monitor and a Mercedes Benz vehicle, and, as usual, threatened to kill the owner of the house and fired shots into the air; (b) Professor Bayona Bemaya, former President of the now defunct National Electoral Commission, suffered a similar raid on 20 July; (c) on 5 June, the residence of UDPS President Vincent Mulumba was search and looted; (d) on 10 June, the home of Malamba Kassanda, UDPS President in Lingwala, suffered the same fate.

152. Security is also undermined when the threat of penalties and reprisals is used to curb the exercise of the legitimate right to dissent and to take part in political activities, as AFDL did with, among others, UDPS leaders Joseph Mukendi wa Mulumba and Bukasa Katshimuena, both on 20 July.

D. Right to liberty of person

153. Various incidents described in other sections of this report (those dealing with physical integrity, procedural guarantees and freedom of opinion, association and assembly) illustrate the precarious state of liberty of person in the Democratic Republic of the Congo. Anyone suspected of being pro-Mobutu or anti-Rwandan may find his freedom and other rights under threat.

154. Many political leaders have been arrested, including the following cases selected by the Rapporteur: (a) the leaders of the Mouvement national

congolais/Lumumba (MNC/L), Cohcolla Ismail Tutw'Emoto Lubenga and Richard Dunia Luminangulu Badihaha, former comrades-in-arms of Kabila who were reportedly invited by him to return from exile, were arrested - or rather kidnapped - in Kinshasa and held on the premises of the National Information Agency (ANR) on 1 July; (b) the ANR coordinator, Kibidini Clement, was detained without charge on 22 July; (c) MNC/L leaders Nepa Bagili Mutita and Pierre Welo were arrested on 5 June and taken to the military prison in Ndolo; (d) Pierre Lumbi, a former minister, was arrested without a warrant on 17 June at the Nganda conference centre simply for having hired an FAZ soldier as a driver: he was released three weeks later; (e) Etienne Tshisekedi was arrested at home on 26 June for having given a lecture at the university and was taken with his wife and family to the house of Commander Masusu, where he was reminded that all political activity was banned; (f) Colonel Ngbanda, Director of the Higher Institute of Commerce, was placed under house arrest on 7 June but later released in response to a student show of solidarity; and (g) Jean Damasene Rwasibo, a teacher in Goma who had been a Hutu refugee in Katale in 1994, was arrested on 11 August 1997 and as of 4 September had still not been allowed to receive visits.

155. The situation of the wife of Professor Omotela (murdered by AFDL, see para. 130), who was imprisoned for several days after the crime, deserves special attention.

156. Other kinds of violations of liberty of person include house arrests (many prisoners are not really released, but instead subjected to this form of restriction of their liberty) and restrictions of varying duration on the right to enter and leave one's own country. Monsignor Laurent Monsengwo, Bishop of Kisangani and former president of CNS and HCR-PT, found himself in the latter situation when he was prevented from leaving the country on 30 May to go to Europe, a ban that was later lifted.

Situation of the prison population

157. The situation of the prison population changed as a result of the war. In the first place, the statement by the leaders of the Alliance that it takes no prisoners - with its extremely serious consequences in a war situation, as emphasized in earlier reports[31] - has its correlate in the Alliance's approach to ordinary crime: action to combat crime has largely consisted of killing the criminal. As examples, those cited in this report and those of the victims the day after the fall of Kinshasa should suffice.

158. On that day, all the political and ordinary prisoners being held in the Makala and Ndolo prisons were released, but many of the escapees - for that would be the most appropriate term for them - were killed in the days that followed.

159. Rather than prisons, it is police and military cells or jails, such as that in the High Court, that tend to be used for opponents.

160. The prisons have now come back into use and, as in police and military cells, according to reports by humanitarian organizations, prisoners receive

very little food, sanitary conditions are inadequate, prisoners sleep on the floor and there is not enough water.

161. No prisoner is allowed to receive visits.

E. Right to privacy

162. The Rapporteur received a good deal of evidence showing that letters sent to areas controlled by AFDL are checked. By way of illustration, the following message from Geneva is reproduced:

> "We are writing to you as relatives of victims, as they cannot do it themselves since either they are dead or their families are prevented from doing so by the climate of terror that reigns in the country. The postal services in eastern Zaire are not working and to send a letter from the Rwandan camps (such as Cyangungu) you have to have it read by a Rwandan security official, and the same applies to sending a fax".

Many claim that they have to turn to people who are travelling to send letters, and it is not easy to find someone prepared to take the risk.

F. Procedural guarantees

163. Among the main guarantees of due process, article 14 of the International Covenant on Civil and Political Rights lists: (a) the right to be tried by an independent and impartial tribunal; (b) the right to be informed promptly and in detail of the nature and cause of the charge; and (c) the right to be tried without undue delay.

164. Although the statute for the judiciary envisaged in articles III, XI and XII of constitutional Decree No. 3 sets forth the principle of the independence of judges, it actually makes it subject to the wishes of President Kabila. That is the only way to interpret the power of the President of the Republic to relieve judges and magistrates of their functions and to dismiss them by agreement with the Supreme Council of the Judiciary.

165. In practice, the independence of the courts has not been respected, and neither has their mission of applying the law, as confirmed by the following examples, which would be unthinkable in a State governed by the rule of law:

(a) Mikobi Kalaam, President of the High Court of Haut Uélé, was deprived of his liberty for 12 days, on the orders of an AFDL commander who was annoyed at preventive measures taken regarding four vehicles which AFDL was using but which belonged to someone else;

(b) In Kisangani, a military commander unilaterally refused to carry out an enforceable sentence in favour of a Mrs. Meta Mukendi;

(c) The Kisangani prosecutor, Basembo, was arrested by soldiers and civilian members of AFDL in May, on the basis of a vindictive accusation by a criminal;

(d) In Likasi, John Kalala, Benôit Mbala and Raymond Ngoie, defence lawyers for the priest Courbon, were threatened with torture by the authorities if they continued to defend him;

(e) Ordinary judges have been replaced by military men - mostly soldiers without training - in Lubumbashi, according to a complaint by the Centre des droits de l'homme et du droit humanitaire in that city;

(f) The establishment of a military court by Decree-Law No. 19 is only making matters worse: (i) it is not justice that is being pursued, but the need to complete operations to consolidate positions conquered by the 50th Brigade of the armed forces; (ii) it allows the military court to try civilians, but under military rules of procedure; (iii) its decisions cannot be appealed against or contested;

(g) The Public Prosecutor of the Republic denounced several illegal appointments of judges by the Ministry of Justice, which led to notice of his imminent dismissal on 22 August.

166. Arbitrariness in the right to justice is apparent in the cases of high officials of the deposed regime, which have involved a series of abuses that also affect liberty of person and physical and psychological integrity. They have been held prisoner, some under house arrest and others already released, without any formal charge, provisional or definitive, being made against them or any declaration of their innocence being issued.

167. What is more, not even Congolese laws are being observed, since the scarce information made public - there are no judicial charges - appears to suggest that the charges typically involve offenses under ordinary law (embezzlement of public funds and property, forgery, etc.), which means that they should give rise to ordinary criminal trials and that detention and release orders should be signed by judges competent under ordinary jurisdiction. Instead, such orders come from the authorities of the executive branch (the Ministries of the Interior and Justice, and even the Director of the National Information Agency, have been mentioned) or else, although on this point the information is even more confused, from the State Security Court, which has absolutely no jurisdiction in the matter rationae materiae.

168. There have also been violations of articles 8 and 9 of the Universal Declaration of Human Rights, concerning the prohibition of arbitrary arrest and the right to an effective remedy by a competent tribunal for violations of fundamental rights, and of article 9 (4) of the International Covenant on Civil and Political Rights, in that the right to an effective remedy to safeguard freedom has been denied. In exercise of this right, nine of the people concerned requested a ruling by the Public Prosecutor before the Court of Appeal in Kinshasa on the illegality of their detention (19 August), but the Prosecutor refused to even hear the petition. Likewise, Belgian businessman P. Claes, who was arrested on the border between the Democratic Republic of the Congo and

Zambia on 19 August on a charge of unlawful enrichment and transferred to Kinshasa, has been unsuccessful in his judicial actions to regain his freedom, even though he has not been committed for trial.

169. Prisoners are being held in various locations: the cells of the High Court, the offices of the Higher Council of War, the Hôtel Invest owned by Congolese National Radio and Television, police headquarters, cells of the disciplinary brigades and of the National Information Agency and the residence confiscated from Isunga Kimaka in Binza Pigeon, and are transferred from one to the other for no apparent reason.

170. Furthermore, it has been reported that some of the individuals concerned have been subjected to various forms of torture and other cruel, inhuman or degrading treatment or punishment, such as being beaten or having their heads shaved, and that the conditions of detention are inadequate: squalid, filthy, with little water and no medical care, etc.

171. Some of the persons concerned are or were: Ilondo Leny, Jiby Ngoy (released), Cleophas Kamitatu Massamba,[32] Kachama Mangalu, Kasereka Kasai, Kigata Ngina, Kikunda Ombala, Kiythima bin Ramazani, Kundo Kuangele, Sdelemani Mwanayile, Umba Kyamitala (released), Luamba Katanzi, Pierre Lumbi (released), Malu wa Koni, Ivette Mangaya (released), Mavinga (released), Mukamba Kadiata (released), Mukamba (released), Makopa Mukumba (released), Djumbambele Mongbondo, Patricia Mongbondo (released), Mashagarusha (released), Mwanzaka Mata, Ndiang Kabul, Nlandu Kusala Khasa, Amuri Tabakombe, Bahata Lukuebo, Bamba Ganga, Barabutu (released), Baramoto (lieutenant), Bemba Salaona, Bokata W'Ekila, Bekazwa, Bofale, Bofassa Djema, Boonda, Bosembo, Bossekota Watshia, Bongombe Bohulu, Buhenda wa Mushaba, Bwabwa wa Kayembe, Djamboleka L'Oma, Fundu Nkota, Essolomwa Eya Linganga, Nzazi, Omare Lea Sisi, Tshiongo Tshibinkubula wa Tumba, Tsibwabwa Ashila Pashi, Vangu Mambweni (released), Tembesa Donat, Zumbu, Kumassi Mantiuka, Ali Kalonga, Mrs. Mondonga, Clement Kibinda, Ambago Tulu, Baruti Ngbanda and Kyungu wa Kumwanza.

172. General Muland and the 10 surviving Katangan gendarmes who gave themselves up with him on 9 May at the then seat of the Government in Lubumbashi, and who are still being held incommunicado, have also not been tried. General Muland had been listed as missing for nearly four months.

173. The situation is the same for the right to be heard by an independent and impartial tribunal in the determination of one's rights (article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights) in cases involving the confiscation of property acquired illegally. This situation was already reported by the Special Rapporteur in his previous report,[33] where he recounted being told that, for AFDC, "anyone who owns property is a Mobutu supporter" and is therefore liable to have such property confiscated. The homes of such individuals are occupied immediately by Alliance officers or officials, or even by President Kabila's personal physician. There are an enormous number of complaints of this nature, and although the accusation is that such property was acquired illegally with public funds, not only has this not been demonstrated but there has not even been any attempt to so do before the courts. In addition, President Kabila created the Office of Illegally Acquired Property, in a further snub to the

National Sovereign Conference which had already begun work in this area, only on 16 July, when the property of former minister Tshibanda, Mokolo ea Pombo, Pay-Pay, Seti Yale, Moleka Nzulama, Max Munga, Nene Nzimbi and others, as well as virtually all the apartments in the Wagenia building, had already been confiscated.

174. In another example of the denial of justice, the very serious and systematic human rights violations committed during Marshal Mobutu's dictatorship have not resulted in judicial proceedings with all the guarantees that this implies, when that was one of the things that democratic sectors had hoped for most.

G. Right to freedom of opinion

175. In his earlier reports, the Special Rapporteur pointed out that, because of the statute governing State radio and television, the absence of national newspapers or newspapers in indigenous languages, and frequent acts of repression, there was no freedom of expression or opinion in Zaire and, above all, the people of Zaire did not enjoy the right to information, despite the existence of independent newspapers. He concluded that in such circumstances the planned elections would not be free.[44] The latest situation, however, makes a tremendous step backwards in this respect.

176. It is true that newspapers continue to circulate freely, but under the same constraints as noted in previous reports: they are available only in Kinshasa, they contain little news, they have limited circulation, they are published only in French, etc. However, various steps taken by the new authorities reveal open contempt for the press and an undeniable effort to prevent the free expression of ideas and the right to information. The Minister of the Interior has said as much: "more than 80 per cent of what the press says is false".

177. The authorities' wariness of freedom of expression is reflected, inter alia, in (a) the high accreditation fee (US$ 100) which the foreign press is required to pay; (b) the creation of an inspectorate for the public audio-visual media, clearly with censorship in mind; (c) the call by the Minister of Information, Raphael Ghenda (Commissioner at the time), on 19 May to the public press to "receive instructions from AFDL", which simply meant that any reporting must be approved by AFDL; (d) the expulsion of independent journalists from the public media, accused - rightly or wrongly, it hardly matters - of being Mobutu supporters (Francine Makoko, for example); (e) the frequent confiscation of equipment during public demonstrations; (f) the requirement that secular private radio stations pay 40 per cent of their revenues to AFDL (20 per cent for religious stations); (g) the advertising ban on private radio stations; (h) the requirement that regional radio stations broadcast news and announcements from the Alliance twice a day; (i) the obligation sometimes to reveal sources or issue denials, as documented by the non-governmental organization Médias Libres, médias pour tous; (j) the requirement, in some places, that news programmes be approved by the Alliance, as apparently happens in Lualuburg.

178. One-party totalitarianism reaches its height in public television and radio, and in Kivu and Maniema at least, private radio stations have been taken

over by the State: programmes praising the new authorities are broadcast non-stop (President Kabila is presented as the man of liberation, reconstruction and development) and AFDL alone has access to those media, or rather, the public media are the voice of AFDL, while no news, announcements, interviews or opinions of dissident sectors are allowed.

179. Dissident political parties are not alone in being silenced: no segment of civil society or non-governmental organization has access to the public media. Civil society has no outlet to express itself, a situation which could lead to violence as an alternative form of expression.

180. It is impossible to hear news from abroad: Congolese National Radio and Television (formerly OZRT) only broadcasts national news. The situation has worsened because Radio France Internationale can no longer be received, as a result of the fighting in the neighbouring Republic of the Congo.

181. In addition to this overall situation, there are cases of direct repression: (a) foreign journalists were humiliated at the Intercontinental Hotel in Kinshasa on 25 May by members of AFDL; (b)on 8 September, Muboyayi Mubanga, editor of the independent newspaper Polydor was arrested and held incommunicado in Lemba, Kinshasa; (c) on 7 May, Matadi Mandefu, editor of La Voix du Peuple in Beni (formerly Radio Mungano) was arrested and held for 24 hours on grounds of his professional activities, apparently because they were not to the liking of the new authorities; (d) also in Beni, Chroniques des Droits de l'Homme, the prestigious programme of the local branch of AZADHO, has been banned since March; (e) on 22 May in Kinshasa, cameraman Betu Kumesu was attacked and tortured for filming a student demonstration for democracy; (f) on 25 May, Alliance agents confiscated from journalists covering a student demonstration all the videocassettes and film which they had; (g) in Lubumbashi, journalist Lenge Kabeya, editor of Le Devoir, was issued a warning by AFDL for having reported on the transfer to Rwanda of Congolese public property; (h) in Kisangani, a journalist was forced to present himself daily to the authorities for having reported the same thing, except that the destination of the property was Uganda; (i) Ali Kalonga, director of the Congolese Press Agency, was arrested for having reported that an Alliance minister was under house arrest; (j) the daily newspaper Le Soft was attacked and ransacked four times and its director had to flee into exile; and (k) Kinyongo Salek, a journalist with Le Potentiel, was abducted from the Palace of Government itself on 1 July and threats were made against him.

H. Right to freedom of association

Human rights and development organizations

182. The new regime is suspicious of the status of human rights and development organizations. Generally speaking, they are tolerated in Kinshasa but not in the interior.

183. For example, after the fall of Bukavu, the then leader of the Banyamulenge, Ruhimbika Muller, organized an NGO coordinating office to replace the Conseil régional des ONG freely elected by the non-governmental organizations

themselves. All NGO activities were suspended and any authorization had to come from Muller and be requested one week in advance. Sometimes, a Banyamulenge agent or "facilitator" had to be present at any meeting. Statements concerning human rights had to be submitted to the authorities in advance for approval. Twenty per cent of foreign funds had to be turned over to the authorities to support the war effort. All four-wheel drive vehicles had to be turned over to the rebels. The organizations were told: "There'll be no more talk of human rights. We're at war". And, of course, several of them, such as the Société des coopératives pour le développement de Fizi and Action pour le développement intégré de Kivu, were looted.

184. In Northern Kivu, the Governor said much the same thing to a number of people, namely, that "non-governmental organizations will remain under the control of the new authorities".

185. In Kisangani, NGO activities are very restricted. The AFDL authorities received an NGO delegation, telling them: "We won't suspend your activities, but any public demonstration must be authorized. You must be careful not to interfere with the Alliance's activities, because our troops are still hot-headed".

186. In addition to violations of the rights to life, physical integrity, freedom of opinion and expression, security of person and others, some examples of acts of repression against non-governmental organizations are: (a) in Kisangani, Les Amis de Nelson Mandela held a study meeting on human rights on 25 May, as a result of which its President, Roberto Ilunga, was summoned to AFDL headquarters (note: not to the Government), where he and the Vice-President were questioned for more than five hours for allegedly insulting President Kabila and for saying that there were foreigners in the Government of the Democratic Republic of the Congo and that AFDL had no respect for democracy; the organization's activities were henceforth suspended by AFDL (not by the Government), all its documentation was confiscated, although it was later returned, and the lives of its President and Vice-President were threatened; (b) many foreign non-governmental organizations were forced to contribute to the war effort by caring for or feeding soldiers; (c) VSV and AZADHO received various kinds of threats, to the point that the latter's President, Guillaume Ngefa, was forced to seek refuge abroad; (d) William Kalume Lualab, of VSV, was arrested on 28 June and two persons inquiring about him received no reply; he was being held incommunicado; (e) the same thing happened to Laurent Kantu, President of the Association des cadres pénitentiares, who was arrested in Kokolo camp simply for making inquiries about other prisoners; (f) Justin Mubikayi, Secretary of the Comité pour la démocratie et les droits de l'homme (CDDH), and the San Alberto parish priest, who were showing a pacifist film (Children of Soweto) in civic education programmes, were arrested and questioned by Alliance members who felt that the film was an incitement to rebellion against the regime (28 July); the film was confiscated; (g) Bulambo Katambo Ambroise and Didi Mwati Bulambo were arrested on 6 May by a Rwandan commander for requesting permission to publish the CADDHOM newsletter Mwangaza; in addition, their Belgian-donated motor bike was confiscated; (h) the same Didi Mwati Bulambo, together with Kylosho Kyalondawa and Donatien Mazombi Mutekulwa, all of them CADDHOM workers, were arrested on 23 August in Kivu by ADFL leaders; and (i) Bertrand Lukando and Ramazani Diomba,

of CNONGD/Maniema, were arrested and tortured in August (see paragraph dealing with torture).

187. Many NGO premises have been looted and the confiscated property is used by ADFL without problem. Even property donated by foreign cooperation to human rights or development organizations is used publicly by the guilty parties, as in the case of GRAFBAF. In Kinshasa, a vehicle was confiscated from the Centre oecuménique pour la promotion du monde rural (COPROMOR) in the last week of May, and the same thing happened to the African Institute for Economic and Social Development (INADES)/Kikwit; in Northern Kivu, World Vision and CARE were looted.

Other associations

188. In addition to political parties and human rights and development organizations, the work of other associations has been affected. This is true of the Southern Kivu Chamber of Commerce, whose President was removed and replaced by an American businessman who had cooperated financially with the rebels, and, among others, of the Syndicat des professeurs congolais, whose activities were suspended by order of AFDL on 9 June for seeking to hold a meeting. The same thing happened to other teachers' unions, such as SYCO and FENECO.

189. Furthermore, the plan to set up AFDL committees in State and private businesses and services, announced on 31 May, is not only intended to create a parallel, ideology-based union movement, but may also become an unacceptable vehicle for betrayal and informants. One such committee has already been created in the Directorate General of Taxation.

I. Right to freedom of assembly

190. All demonstrations have been prohibited since 19 May, a ban that was reiterated on 26 June. On 28 August, the Minister of the Interior stated that not only demonstrations in public places, but even those held in private venues, were prohibited. Nonetheless, political parties and other organizations, as well as students, stage peaceful demonstrations. As in the previous era, these are suppressed violently, resulting in death, injury and long-term detention without formal charges against which to defend oneself.

191. The violence with which demonstrations are suppressed cannot be blamed on excesses on the part of middle-ranking members of the AFDL police. It was President Kabila himself who, in referring to the demonstrations that took place in Bukavu and Maniema in June, warned that if such demonstrations continued, he would have participants shot, and added that he was going to impose a bit of discipline.

192. In order to avoid demonstrations, the new authorities prohibited vigils for the victims of the massacres that occurred at the end of May in Uvira. The vigils were to have taken place in private, but the authorities ordered the bodies buried immediately. This attitude also reflects utter disregard for the

indigenous population, who customarily hold wakes for their dead lasting two or three days.

193. The following is a partial list of peaceful public demonstrations that have been violently suppressed: (a) on 15 May, more than 100 student demonstrators were detained and taken to Kalolo camp; (b) on 28 May, at a student demonstration demanding an end to foreign intervention, several students were injured; (c) a student demonstration on 9 June demanding the release of the Director of the National Institute of Commerce; (d) a UDPS demonstration on 30 June, at which 18 people were arrested; (e) a UDPS and PALU demonstration on 25 July, at which two people died and more than 48 were arrested, of whom several were tortured; (f) on 15 August, at a UDPS demonstration commemorating Tshisekedi's appointment as Prime Minister in 1992, 20 people were arrested and many of them tortured; (g) on 26 August, a student, Makolo, was killed at a demonstration in Kinshasa; (h) some days later, participants in ceremonies of mourning at the university were met with repression; and (i) many arrests were made at a UDPS demonstration in Bandalungwa.

J. Economic, social and cultural rights

194. The Special Rapporteur believes that it is too soon to evaluate the efforts made to ensure the enjoyment of economic, social and cultural rights. The international obligation to ensure them involves adopting measures for their progressive attainment. It is advisable to wait to make an analysis, given the war effort and the absence of a Government plan to date.

195. In any event, the galloping inflation inherited from the previous regime was reined in from the day after the AFDL triumph and in the month that followed,[35] and this should result in improved living conditions, particularly for wage earners. However, some sources claim that inflation has started to rise again, although not at the uncontrolled rates seen previously.

196. On 25 June, civil service salaries were paid for the first time since the AFDL triumph, on the basis of the nominal salaries paid in Kengo's time. The following month, a civil service union protested that there had been discrimination in favour of the most senior civil servants.

197. In education, there is justifiable concern about the military presence in the universities. Student unrest has been exacerbated by the fact that the Ministers of Education and Finance announced on 8 July that students or their parents would have to continue to pay their share of the cost of registration, maintaining an odious system that has forced many students to interrupt their studies. This situation prompted lecturers to go on strike from 4 to 18 July, but on 29 July, the Minister of Education announced that, as of the following academic year, education would be free.

198. There has also been repression. The Rector of the University of Kinshasa warned three students that if they insisted on inviting Tshisekedi, they might be expelled from the University.

K. Situation of children

199. As yet, no definite policy towards children is discernible. However, two war-related circumstances are cause for grave concern. The first is the complaint, already made in last year's report, that children have been recruited by AFDL for armed combat. This year, similar complaints were made, and there was even mention of 11-year-olds carrying heavy arms and engaging in combat. In the process, these child soldiers, known as "Kadogo", have been corrupted, and they have participated in robberies and killings.

200. The second circumstance is the absolute disregard shown for children's lives in the attacks on refugee camps and in the blockading of humanitarian assistance to them.

L. Situation of women

201. Again, it is impossible to predict what the new Government's gender policy will be. However, the limited number of women in the Government is striking: one woman minister (no longer in office), Justine Mpoyo Kasa Vubu (Civil Service), and two deputy ministers, Julina Lumumba (Information and Propaganda) and Mululu Mamboleo (Social Affairs).

202. According to a study by the Mouvement des femmes pour la justice et la paix, women have suffered most and have the highest expectations, as they are less confrontational and belligerent than men. The Special Rapporteur shares this view and looks forward to greater political participation by women in the future, just as they now play a leading role in non-governmental organizations.

203. The Special Rapporteur learned of the existence of a proposal by women's organizations for improving the situation of women in society (amendments to the Civil and Family Codes), but apparently the Government has yet to discuss it.

204. There were several complaints of acts directly affecting the dignity of women, including rape as a form of torture. Furthermore, Congolese women in particular were sexually assaulted by soldiers described as Rwandan-looking or Portuguese-speaking in Kikwit, Bandundu province.

205. Doing as they please, for example in the way they dress, has been severely punished. There have been innumerable reports of young women wearing jeans or trousers being beaten by AFDL soldiers: (a) on 22 May in Matete market, Kinshasa, four girls were publicly undressed by AFDL members for wearing stockings; (b) around the same time, a 25-year-old woman wearing a miniskirt was also stripped and beaten near the square Triangle de la Cité Verte; (c) on 20 May, Kasenge Mimi was stripped and left naked in her parents' home because AFDL soldiers did not approve of what she was wearing; (d) the same thing happened to three other girls on 7 June at the intersection of Force Publique and Assossa avenues; (e) on 2 June, a girl's clothes were destroyed in Barumbu; (f) on 28 May, the same thing happened to Olga Mbase in Ngiri Ngiri; and (g) on 22 June, a girl named Mado was beaten and injured for the same reason. The reports are endless.

206. Incidents of violence against women have been frequent: (a) a Mrs. Chryson was tortured on 2 April after being detained because of accusations made by the mistress of an AFDL member; (b) on 2 April, 12-year-old Gisèle Fatuma Cheka was raped in Camp Dumez, Kitambo; (c) Mrs. Badibanga Bella Liliane was detained, beaten and sexually abused on 10 July by 17 AFDL members who accused her of having been the mistress of a FAZ soldier; (d) on 3 May, 18-year-old Solange Machozi Baeni was raped throughout the night by AFDL soldiers on the road from Masisi to Goma; (e) two women who requested anonymity were raped by soldiers in Lubumbashi on 13 June; and (f) in July in Kinshasa, a girl was kidnapped and held for four days by soldiers who raped her repeatedly.

207. The inhumanity of members of the new army is revealed by their treatment of the wife of missing prisoner Matungulu Bareke: she was attacked four times in Kibuma to make her stop looking for him.

208. The Special Rapporteur believes that the question put to the deposed Government by the Committee on the Elimination of Discrimination against Women as to "whether effective measures had been taken to protect the physical and moral integrity of refugee women and of all women victims of armed conflicts" should be answered by both the Governments that were in power in 1997. No measure to that effect has been taken.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

The democratic process

209. During the last years of Marshal Mobutu's regime, there was a budding transition to democracy, encouraged by civil society, the churches and non-governmental organizations, discouraged by the man who had been in power for 32 years and his court, and for the most part not encouraged by the so-called political class. That process had brought about gains in the areas of social organization, freedom of expression and a multi-party system, among others which, with advances and setbacks, could be considered to have been consolidated. There was also the duly agreed national project of the National Sovereign Conference (CNS).

210. The rebel movement's growing popularity among many sectors could, for the most part, be attributed to their common rejection of the dictatorship and to the hope that AFDL would implement the CNS agreements, although AFDL always sent out mixed signals on this score.

211. Unfortunately, the record of the first few months seems less than satisfactory. If, by a democratic regime, we mean one in which human rights are respected, power is vested in the Government by the people through free elections, there is a separation of powers, the law is enforced by the authorities, there is equality under the law, the armed forces and police are at the service of everyone, the courts perform their functions independently, political parties express themselves freely, and there is freedom of the press, then this report shows that none of these conditions are being met.

212. The regime has eliminated the civil rights to life, liberty, physical integrity, etc.; the rights of political participation have been suspended; there are no measures to ensure the enjoyment of economic, social and cultural rights; announcements of free elections are contradictory and no effort is being made to put them into effect; President Kabila exercises executive and legislative power and judges and magistrates are answerable to him; all laws which contradict the new precepts laid down by the President have been repealed; one ethnic group predominates over hundreds of others, often resulting in conflict; the mere suggestion that someone is a Mobutu supporter, guilty of genocide, a Hutu or Bembe, among other stigmatizations, results in discrimination against that person; the new armed forces and police are at the service of the political and ethnic power group in the Government and commit abuses against opponents and "enemies"; the courts are subject to the executive branch; political parties are banned, except for one which is identified with the State; and there is no freedom of information on radio and television, the most popular public media.

213. A mentality of victors and vanquished has taken hold, aggravated by the widespread perception that the former include foreigners, a situation which causes a strong sense of humiliation.

214. The Alliance refuses to admit that the liberation was not due only to its efforts, that there were constant demands for democracy - and much blood spilt in the process - over the past seven years. The "ville morte" days launched CNS and relaunched it every time it was brought to a standstill. The independent press, within the limits imposed on it, disseminated ideas of freedom, and human rights organizations taught the value of dignity. None of this is acknowledged by AFDL.

215. The new State structure, based on an omnipresent state party (although this is denied), the absence of a short-, medium- or long-term democratic project, and the fact that there is nobody capable of controlling the exercise of power all lead the Special Rapporteur to conclude that the Congolese people do not enjoy, and will not enjoy in the foreseeable future, the human right to democracy.

Human rights

216. The Alliance's arrival had some positive aspects, such as an end to extortion and looting, increased security in the cities and a drop in ordinary crime.

217. However, there are also the negative aspects described in this report: violations of the right to life, in the form of political murders, police brutality and disappearances; the use of torture and other cruel, inhuman or degrading treatment or punishment; attacks on the dignity of women; and restrictions on the freedoms of assembly, association (especially political parties and non-governmental organizations), opinion and expression, etc.

218. The conclusions of the report of the Lutheran Church, drafted at the request or with the endorsement of AFDL, do not differ substantially from those contained in this document, in that they confirm that there have indeed been

human rights violations and that these are continuing. The number of victims is unimaginable. The situation is very complex and more than one sector is to blame. Inter-ethnic conflicts have in fact been going on in Kivu for years.

219. The truth is that, unless they win the human right to democracy, the Congolese people will be unable to enjoy all their civil, cultural, economic, political and social rights.

220. The Government does not take any blame nor admit to any wrongdoing. It is always the others, the stigmatized, who are in the wrong. Humanitarian agencies are presented as protecting those guilty of genocide, and non-governmental organizations and the Special Rapporteur are branded as liars.

221. The present Government, like its predecessor, also refuses to cooperate with the mechanisms of the Commission on Human Rights or with those established by human rights treaties. While such conduct may be viewed with tolerance, given its short time in power and the conditions which it faced when it came to power, such cooperation should be resumed soon in order to win the international community's confidence in a climate of respect which has until now been lacking.

National peace process

222. AFDL has failed to advance the peace process, if it ever really intended to do so. The country is more sharply divided than before, inter alia in its armed forces: between AFDL and former FAZ members and between Rwandans and Katangans.

223. The ethnic conflicts have not been settled, nor will they be settled until the State commits itself to a policy of reconciliation. In the renewed conflict in Northern Kivu, the State, instead of acting as mediator or peacemaker, has aggressively taken the side of one of the ethnic groups.

224. Unfortunately, the security which the victorious forces had imposed on the conquered cities has been considerably eroded by those same forces. This is confirmed by the attacks on property and security described in this report.

B. Recommendations

To the Government of the Democratic Republic of the Congo

225. Democratic process. The Government should immediately begin the process of building democracy. This process is not a matter of choice for the Government, nor is it a gracious concession to the international community; it is an unavoidable obligation to the people. Therefore, a dialogue should be initiated promptly with the democratic forces that made it possible to end 32 years of authoritarianism. The text elaborated through the collective efforts of CNS cannot be discounted; it is not written in stone, but it is a very sound foundation. No Congolese should be excluded from the process on grounds of ethnic origin, politics, religion or gender. Conversely, no one who is not Congolese should be entitled to participate.

226. Electoral timetables should be agreed upon, not imposed, and realistic, not demagogic; they must not be used as pretexts for postponing the process indefinitely.

227. Structure of the State during the new transition. The transition cannot progress without an effective separation of powers and a fully functioning multi-party system. The State cannot be exempt from controls. The process begun by CNS represents a minimum which cannot be ignored. The guarantee of pluralism is incompatible with the existence of a single party and even more so with a state party, such as MPR.

228. Human right to justice. The fact that judges are answerable to the President of the Republic is incompatible with the rule of law, as is the fact that the President and his ministers can exercise judicial functions such as ordering arrests. To restore these rights, the Government must: (a) guarantee the independence of the judiciary; (b) give the latter jurisdiction over the investigation of property misappropriated by former dignitaries of the Mobutu Government; (c) investigate, with due respect for procedural guarantees, crimes committed during both the former regime and the current one, and ensure that the executive branch cooperates fully with the judicial branch to this end; and (d) adopt other measures to end impunity.

229. Armed forces and police. The new Congolese armed forces should meet criteria of national representativeness and not be dominated by any given ethnic group, region or political tendency. The armed forces and the police should be national, in the sense of upholding Congolese values and serving the Congolese people. Former FAZ members should be integrated in conditions of dignity. Members should be given mandatory training on developing a culture of respect for human rights. Care should be taken to ensure that children under the age of 15 do not take part in hostilities (article 38 of the Convention on the Rights of the Child).

230. Right to life and to physical integrity. Summary executions, enforced disappearances, looting and torture can and must be stopped. No exceptions can be made in this regard. These human rights violations must be completely eradicated.

231. Freedom of expression and opinion. The Government must lift all measures that restrict these freedoms for journalists, newspaper owners and all Congolese people who need or wish to be informed. No one should be persecuted for his or her ideas or for disseminating them.

232. Non-governmental organizations. These are not the enemies of the State, but its partners. They play an indispensable role and the State should see their criticisms as a patriotic contribution to the creation of a society free of injustice. They should enjoy complete freedom in establishing themselves, electing their authorities, receiving contributions, determining their mandates and exercising their functions.

233. Nationality. There is sufficient basis in international law for persons belonging to non-native ethnic groups to be recognized as Congolese nationals.

However, in no case does this authorize the granting of such recognition to persons who, by law, are foreigners.

234. Status of women. The Government should implement a policy to guarantee an end to legal, cultural and educational discrimination against women.

235. Conflict in Northern Kivu. The Government has all the tools it needs to settle the ethnic conflicts in Kivu in conditions of justice and equality, without increasing animosities or taking sides.

To the United Nations and the international community

236. Assistance for internally displaced persons and environmental rehabilitation. The Special Rapporteur reiterates his 1996 recommendation to the effect that the international community (regional and international organizations, both governmental and non-governmental, and States should help to rehabilitate the environment in the Democratic Republic of the Congo, which has deteriorated as a result of the need to accommodate over 1 million Rwandan refugees, and should assist internally displaced persons.

237. Mechanisms of the Commission on Human Rights. Since 1967, the Commission has developed a number of mechanisms for carrying out in-depth studies of situations which reveal a consistent pattern of human rights violations. Such mechanisms involve the conduct, by experts, of studies on human rights in a given country, on a particular human right or on a specific form of human rights violation. Experience has shown that special rapporteurs have presented objective reports, whose basic purpose is to determine whether or not specific actions are consistent with international declarations and agreements. It is true that the work of special rapporteurs is usually not recognized by the Governments concerned. However, it generally is recognized by victims of human rights violations, non-governmental organizations and States which respect those rights in their policies and international relations. The author can attest to the importance of these so-called special procedures in securing the enjoyment of greater freedom, based on his experience as a victim of violations and a defender of human rights in his own country.

238. The World Conference on Human Rights, held in Vienna in 1993, recommended increased coordination in support of human rights and fundamental freedoms within the United Nations system, proposed that the Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs and underlined the importance of preserving and strengthening those mechanisms.

239. This is an unfinished task which faces opposition from some States. Capitulating to them might bring results in the short term, but in the interests of a long-term vision, Vienna must not be forgotten.

Notes

[1] E/CN.4/1995/67, E/CN.4/1996/66 and Corr.1 and E/CN.4/1997/6 and Add.1 and 2.

[2] Whenever no year is indicated for a date, the year is assumed to be 1997. In addition, the name Zaire or Republic of Zaire is used to refer to the Government which was in power until 17 May 1997, and the name Democratic Republic of the Congo is used to refer to the one which took over on that date.

[3] See E/CN.4/1997/6/Add.2.

[4] The Mobutu regime also refused to authorize the Special Rapporteur to visit the country in July 1996 to investigate the violence taking place in the ethnic conflicts in Northern Kivu, which resulted in numerous casualties and refugees, primarily among the Tutsi population. See E/CN.4/1997/6/Add.1, paras. 8 and 9.

[5] Some sources say that this report was requested by the Alliance, which allegedly appointed the members of the commission.

[6] E/CN.4/1997/6/Add.2, para.9.

[7] The Mobutu-Kengo Government made very similar accusations against the Special Rapporteur. See E/CN.4/1996/66 and Corr.1, para. 8, and E/CN.4/1997/6, paras. 18 and 19.

[8] E/CN.4/1995/67, para. 277.

[9] E/CN.4/1997/6, paras. 180 and 189.

[10] Those efforts included:

- A symposium held in Nairobi in December, which Mobutu did not attend;

- A visit to Gbadolite by President Moi of Kenya, who urged the Marshal to negotiate, without success;

- A meeting in Pretoria on 28 January. The Government was urged to negotiate with the rebels, again without success;

- At the end of January, efforts by Mr. Mohamed Sahnoun, Joint United Nations/Organization of African Unity (OAU) Special Representative, to persuade Deputy Prime Minister Kamanda wa Kamanda to begin negotiations, with the same result. Kamanda's position was that outsiders should not interfere in Zaire's internal affairs;

- In January, efforts by King Hassan II of Morocco vis-à-vis delegates of Mobutu, without success;

- Zaire's reply to the proposal for a ceasefire was that the latter was unacceptable unless the invading troops first withdrew;

- The Security Council's five-point peace plan of 18 February, proposed by Special Representative Mohamed Sahnoun. Proposed in February, it was ultimately accepted by a Government in utter defeat, but was not accepted by the victorious rebels, especially since two of the points stipulated the withdrawal of all external forces from Zaire and protection of the refugees and facilitation of access to humanitarian assistance;

- A meeting in Niger on 19 February in support of the Security Council's proposal proved fruitless;

- President Mandela extended an invitation to Mobutu and Kabila, but only the latter attended (Mobutu sent an emissary). By that point, Kabila's position was gradually hardening: he agreed to talk, but only about the resignation of Mobutu Sésé Séko;

- Despite renewed efforts by Mr. Sahnoun in February and March, the respective parties were unyielding. For the Kinshasa Government, the only solution was the withdrawal of the aggressors under international supervision; for AFDL, the only topic of discussion was the withdrawal of Mobutu. Peace was viewed as a consequence, not a condition, of the negotiations;

- Efforts by the Vice-President of South Africa, Thabo Mbeki, vis-à-vis Mobutu;

- A meeting in Togo on 27 March, at which the Zairian delegation, headed by one of the two First Vice-Presidents of HCR-PT, of the non-armed radical opposition to Mobutu, and a delegate of the latter, met with the Commissioner for Foreign Affairs of the Alliance, Bizima Karaha; this meeting also failed to produce results;

- A meeting in South Africa from 5 to 8 April, at which Kamanda wa Kamanda represented the Government and Bizima Karaha represented the rebels;

- A meeting in Cape Town between Kabila, South African Vice-President Thabo Mbeki and Joint United Nations/OAU Special Representative Mohamed Sahnoun on 16 April;

- Bill Richardson, in his capacity as envoy of President Clinton, sought to reach a settlement in separate interviews with Mobutu and Kabila on 29 April, but with no success whatsoever;

- A meeting on the ship Outeniqua, the first meeting between Kabila and Mobutu. By that point (4 May), Mobutu had nothing left to offer but his resignation; he did not, however, offer to resign;

- On 8 May, a group of Central African Presidents, meeting in Libreville, sought to persuade HCR-PT to appoint a President empowered to negotiate. Although the effort was a last-minute one, two days later the Parliament elected as its First President the Catholic Bishop of Kisangani, Monsignor Laurent Monsengwo. The rebels were on the threshold of victory.

[11] Witnesses have consistently testified, inter alia, that large sums of money earmarked for the war effort were squandered and that high-ranking officials sold the rebels weapons which had come into their possession after Opération Turquoise in 1994.

[12] On the day Kinshasa fell, General Mahele was assassinated by DSP members on grounds of treason, although some sources attribute his death to Mobutu's own son, Mobutu Kongolo.

[13] The Special Rapporteur could obtain neither Decree-Laws Nos. 1 and 2 nor subsequent decree-laws, although he consulted many lawyers and non-governmental organizations.

[14] See E/CN.4/1996/66, paras. 60 to 63, and E/CN.4/1997/6, paras. 39 to 44, among others.

[15] See E/CN.4/1995/67, paras. 248 and 260; E/CN.4/1996/66, paras. 120 (a) and 125 (a); and E/CN.4/1997/6, para. 214.

[16] This is the name given to those who fought with Tshombe in the 1960s, during secession, and later participated in the guerrilla operations of the 1970s. Although some might be actual Katangan gendarmes, most are the latter's sons. They have always lived mainly in Angola, and they cooperated with the AFDL war effort.

[17] See E/CN.4/1996/66, paras. 84, 85 and 130, and E/CN.4/1997/6, paras. 111 to 138 and 239.

[18] See E/CN.4/1997/6, para. 178.

[19] Noted in document E/CN.4/1997/6, paras. 42 to 49.

[20] In fact, it was the European Union delegation which made the announcement, stating that it noted with satisfaction the willingness of the Congolese authorities to base their actions on democracy and human rights, and adding that the President had pledged to observe the electoral timetable, which provided for the holding of free and democratic elections in 1999.

[21] See E/CN.4/1997/6/Add.1.

[22] See E/CN.4/1995/67, paras. 96 to 103, and E/CN.4/1996/66, paras. 43 to 54.

[23] E/CN.4/1997/6 and Add.2.

[24] See E/CN.4/1966/66, paras. 23 and 31, and E/CN.4/1997/6/Add.1.

[25] E/CN.4/1997/6, para. 208.

[26] E/CN.4/1995/67, paras. 238 to 241; E/CN.4/1996/66, paras. 112 to 115; and E/CN.4/1997/6, paras. 150 to 151.

[27] CEDAW/C/1997/L.1/Add.11.

[28] E/CN.4/1997/6/Add.2, paras. 22, 25, 27 and 29.

[29] Ibid., para. 25.

[30] E/CN.4/1997/6, paras. 186 and 187, and E/CN.4/1997/6/Add.1, para. 10.

[31] E/CN.4/1997/6, para. 199, and E/CN.4/1997/6/Add.2, para. 16.

[32] One of the fathers of Congolese independence.

[33] E/CN.4/1997/6/Add.2, para. 31.

[34] E/CN.4/1995/67, paras. 217 to 222 and 254; E/CN.4/1996/66, paras. 101 to 103 and 121; E/CN.4/1997/6, paras. 96 to 100 and 219.

[35] The rate of inflation was announced by the commerce department of the United States Embassy.